

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

MALEEEHA S. AHMAD, et al.,)
Plaintiffs,)
v.) No. 4:17-CV-2455-CDP
CITY OF ST. LOUIS, MISSOURI,)
Defendant.)

PRELIMINARY INJUNCTION HEARING
VOLUME 2

BEFORE THE HONORABLE CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE

OCTOBER 19, 2017

APPEARANCES:

For Plaintiffs: Anthony E. Rothert, Esq.
Jessie M. Steffan, Esq.
Omri E. Praiss, Esq.
**AMERICAN CIVIL LIBERTIES UNION
OF MISSOURI FOUNDATION**
906 Olive Street, Suite 1130
St. Louis, MO 63101-1448

For Defendant: H. Anthony Relys, Esq.
Thomas R. McDonnell, Esq.
ST. LOUIS CITY COUNSELOR'S OFFICE
1200 Market Street, Room 314
St. Louis, MO 63103

REPORTED BY: *Gayle D. Madden, CSR, RDR, CRR*
Official Court Reporter
United States District Court
111 South Tenth Street, Third Floor
St. Louis, MO 63102 (314) 244-7987

INDEX

Witnesses:

TIMOTHY SACHS

Direct Examination by Mr. Relys	Page 3
(continued from 10/18/2017)	
Cross-examination by Mr. Rothert	Page 57
Redirect Examination by Mr. Relys	Page 94

MATTHEW KARNOWSKI

Direct Examination by Mr. McDonnell	Page 111
Cross-examination by Mr. Rothert	Page 131

BRIAN ROSSOMANNO

Direct Examination by Mr. Relys	Page 146
Cross-examination by Mr. Rothert	Page 209
Redirect Examination by Mr. Relys	Page 243

1 (Proceedings commenced at 12:03 p.m.)

2 THE COURT: All right. Lieutenant Sachs, you can
3 resume the stand. And, Mr. Relys, can you tell me how you
4 pronounce your last name?

5 MR. RELYS: Relys.

6 THE COURT: Relys. Okay.

7 MR. RELYS: Yes, Your Honor.

8 THE COURT: I keep look at the spelling and then
9 having trouble with it.

10 MR. RELYS: That's all right. You're not the only
11 one.

12 THE COURT: Yeah.

13 THE WITNESS: Good afternoon, Judge.

14 THE COURT: Good afternoon. And, Lieutenant Sachs,
15 you understand you're still under oath from yesterday;
16 correct?

17 THE WITNESS: Yes, ma'am.

18 THE COURT: All right. You may proceed.

19 **TIMOTHY SACHS,**

20 HAVING BEEN PREVIOUSLY DULY SWORN, WAS EXAMINED AND TESTIFIED
21 AS FOLLOWS:

22 DIRECT EXAMINATION

23 (continued from 10/18/2017)

24 BY MR. RELYS:

25 Q Good morning, Lieutenant.

1 A Good morning.

2 Q Yesterday, I think we were just about done talking about
3 the events on the evening of September 15th, 2017, in the
4 Central West End. Do you recall that?

5 A Yes, sir, I do.

6 Q All right. And I was just about to ask you about the
7 following evening, which was Saturday, September 16th.

8 A Yes, sir.

9 Q Were you involved in any -- were there protests on that
10 night?

11 A Yes, sir, there were.

12 Q Or, I guess, on that day?

13 A Yes.

14 Q Were you involved in the police response to those
15 protests?

16 A The evening response, yes, sir, I was.

17 Q Okay. Tell us a little bit about what your involvement
18 was on Saturday.

19 A That portion of the protest and the demonstrations were
20 actually in St. Louis County, in University City. The City
21 CDT team was just supplementing the St. Louis County response
22 team that evening.

23 Q And where about? You say St. Louis County. Where was it
24 in St. Louis County?

25 A It was in The Delmar Loop, on the far west end.

1 Q So near the city line?

2 A Yes. Oh, yeah, it did border the city. We actually
3 wound up coming into the city later that evening.

4 THE COURT: Okay. But when you say it was on the far
5 west end of The Loop, is that the city line? I thought that
6 was the east end of The Loop.

7 THE WITNESS: The city is the east end, but --

8 THE COURT: Right.

9 THE WITNESS: -- we were supplementing St. Louis
10 County, and the demonstrations had started in the west end.

11 THE COURT: Okay. So it started at the far west
12 end --

13 THE WITNESS: Yes, ma'am.

14 THE COURT: -- and then it moved?

15 THE WITNESS: Yes, ma'am.

16 THE COURT: Okay.

17 Q (By Mr. Relys) Okay. And you normally don't have
18 jurisdiction in the county; right?

19 A That's correct.

20 Q But I'm assuming there's some type of agreement that gets
21 worked out prior to these things?

22 A Yes, sir, there is.

23 Q Okay. And so you had some freedom to operate inside the
24 county?

25 A Yes, we did.

1 Q All right. And so tell us -- tell us about sort of how
2 events unfolded on Saturday night.

3 A It was later in the evening. It was dark out. St. Louis
4 County had responded to calls from University City that they
5 had protestors in the streets that were blocking streets, and
6 then windows were starting to be shattered in businesses. So
7 St. Louis County took their CDT response team to the far west
8 end, and then all we did was supplement them. They didn't
9 have as many officers as we did.

10 They actually struck a line and started moving protestors
11 east on Delmar, and they were using their ballistic vehicle to
12 make announcements for dispersal all the way down the street.
13 They continued to engage these people and walk them east into
14 the city of St. Louis, and all we did was follow them.
15 Basically, we were just supplemental people in case they
16 needed something.

17 Once they reached the city limits, St. Louis County
18 stopped. They opened up their lines, and then we went
19 forward. We struck our line directly in front of them, and
20 then we walked these people to the intersection of Skinker and
21 Delmar. Again, we're asking them to disband. Some of the
22 people went north. Some of the people went south on Skinker,
23 but the main group stayed on Delmar. We walked across Delmar
24 and then walked a block and a half east into the city just
25 past -- I believe it's The Pageant.

1 Q Sure.

2 A And then the group started disbanding. We stayed in the
3 street there for a while, and once the group disbanded, we
4 just collapsed our line into the street and called for the
5 buses and actually had the officers board the buses there in
6 the middle of the street, and we left the area.

7 Q You made a mention earlier of some property damage?

8 A Yes, sir.

9 Q What was that?

10 A There was broken windows in businesses that I saw, but I
11 didn't see it happening. Again, we were behind St. Louis
12 County.

13 Q Any -- we talked yesterday about rocks and bottles,
14 things of that nature being thrown at police in the West End.

15 A Yes, sir.

16 Q Anything like that going on in The Loop area on that
17 Saturday?

18 A Not that I observed, no, sir.

19 Q Okay. So relatively calm night?

20 A Much more calm than the evening prior, yes.

21 Q But still some property damage?

22 A Yes.

23 Q And what time -- I think you said that you had helped in
24 the evening. What time frame are we talking about for this?

25 A It was later in the evening, maybe 9:00, somewhere around

1 there.

8

2 Q Dark out?

3 A Yeah. Oh, yes, it was. Yes.

4 Q All right. Had there been demonstrations during the day?

5 A There were, but there was no CDT response to those
6 demonstrations.

7 Q Okay. And you're the -- that would be -- CDT response is
8 what you would know the most about?

9 A Yes. That's all I actually had anything to deal with,
10 yes, sir.

11 Q Okay. So that you weren't necessarily monitoring those
12 earlier demonstrations?

13 A No, sir. We were staged again inside of Forest Park. So
14 we didn't respond to anything until we were called.

15 Q Does the fact that you don't know much about the
16 demonstrations that occurred on Saturday, September 16th, tell
17 you anything about the relative peacefulness or violence of
18 those protests?

19 A There was none, or otherwise we would have been called.

20 Q There was no violence?

21 A That's correct.

22 Q Okay. All right. I'd like to talk then about -- move on
23 to Sunday, the 17th of September.

24 A Yes, sir.

25 Q Were there protests on that day?

1 A Yes, sir, there were.

2 Q And were you involved in the police response to those
3 protests?

4 A Yes, sir, I was.

5 Q All right. Tell us about how Sunday unfolded for you.

6 A There were some protests in the late afternoon and
7 evening, relatively uneventful at the time, but a lot of it
8 circled and formed downtown to the point where there was
9 larger groups gathering downtown, and we started monitoring
10 calls for service that there were groups moving up and down
11 Olive, Locust, and there began to be property damage in the
12 evening. Windows were being broken. A dumpster was set on
13 fire. There were trash cans and benches being thrown in the
14 street.

15 Q And what time of the day are we talking about here?

16 A This is about 8:00, 8:00 in the evening, 8:30, something
17 like that.

18 Q Okay. And the protest had been going on before this?

19 A Yes.

20 Q Okay. Had you been in -- had the CDT or the tactical
21 team been involved in responding to any of those protests?

22 A No, sir.

23 Q Do you know anything about where those protests were or
24 what they -- what they -- anything about those protests?

25 A No, sir, I don't.

1 Q Okay. And that's -- could you tell us -- tell us why you
2 wouldn't know about that.

3 A Once again, unless there's property damage, violence, or
4 officers being assaulted where there would need to be a
5 tactical response or a CDT response, my team or nothing that I
6 had anything to do with would be responding to that. There
7 would be a bike officer response if there were large crowds,
8 but the bicycles would handle most of whatever they had to do
9 as far as traffic control or something, but as far as a CDT
10 response, no, sir.

11 Q So the police were -- police may or may not have been
12 involved earlier in the day, but it wasn't your guys?

13 A That's correct.

14 Q All right. So it sounds like around 8:00 or 9:00, your
15 tactical squads or your CDT squads did get involved.

16 A That's correct.

17 Q Tell me how that -- tell me what happened.

18 A Again, we were monitoring air traffic that the Special
19 Operations group and the bicycles were encountering people
20 breaking windows in the downtown area, and there were larger
21 groups moving through the downtown areas, and there needed to
22 be some type of response to try to move these people out of
23 downtown.

24 Q And you say you heard that. Where'd you hear that?

25 A Over the radio.

1 Q And where were you located when you heard this?

2 A Originally, we were staged on Jefferson and Scott.

3 Q Okay.

4 A Yeah, just outside the immediate downtown area.

5 Q All right. And what did you do when you heard that
6 information and -- and -- what'd you do when you heard that
7 information?

8 A I met with the incident commander, Colonel Leyshock. He
9 had CDT and my tactical squad meet him in front of City Hall.
10 Our CDT teams were actually responding from Highway 44 and
11 Hampton area. So it took them a little while, but the St. or
12 the State Highway Patrol had a team closer. So we had the
13 State Highway Patrol team meet us in front of City Hall at
14 Tucker and Market.

15 Q So you meet up with Colonel Leyshock, and you have --
16 who's with you as far as your folks?

17 A It's just the SWAT team, my tactical team at the time,
18 and then the colonel, the deputy commander of his bureau, his
19 aide, and then the Missouri State Highway Patrol.

20 Q Okay. And you meet up at City Hall, and what happens
21 next?

22 A We're still monitoring traffic. There were large groups
23 of people moving through the downtown area. They're
24 actually -- some of them are throwing rocks, bottles,
25 different items at the officers in the downtown area. We're

1 trying to get them moved out or investigate the property
2 damage. So the colonel asked that we take a squad and just
3 move closer in to the downtown area. So my squad -- the
4 tactical team from the City supplemented the Highway Patrol.
5 We started working north on Tucker, and this was not a
6 skirmish line. They were walking two at a time, just up the
7 sidewalks, and as we were moving north, we could see large
8 groups of people coming off of Olive and off of Locust into --
9 they were actually going west of Tucker from the downtown
10 area. One group actually stopped in front of the bank at
11 Olive and Tucker, and as we approached, they started putting
12 on goggles, masks. They were reaching into their backpacks.
13 We didn't know what they were doing, but it was a much larger
14 group than we had originally thought we were going to
15 encounter. So the colonel right away said, "We're going to
16 have to disperse these people." I had a sergeant that was
17 operating inside the tactical vehicle we had. I told him to
18 make the announcement to disperse and the chemical munitions
19 order immediately. He made that. Some of the people looked
20 up at us. I got the finger from a couple of the folks.
21 Obviously, they saw it, but they weren't moving at all. I
22 told them, "Hey, make the announcement a second time."
23 Q I'm going to stop you there for a second.

24 A Yes, sir.

25 Q When you say you're making the announcement, tell me the

1 nature of these warnings that are given.

2 A This is the dispersal order with the caveat that there
3 will be chemical munitions deployed --

4 Q Okay.

5 A -- because my team deploys the chemical munitions. So
6 when we make that announcement, that's what that is.

7 THE COURT: And so it just says what -- "You have to
8 leave"?

9 THE WITNESS: Yeah.

10 THE COURT: It doesn't tell them where to go. It
11 just says, "Leave. And if you don't, there's going to be
12 chemical agents or arrests." Is that right? Because we've
13 heard so much different things about dispersal orders, I kind
14 of want to know what the words were. And if you need to have
15 the document, that's okay, but I need to know what was
16 actually said.

17 THE WITNESS: And, Judge, I would. I didn't read it.
18 I just gave the order over the radio because you can't hear
19 anything from inside that vehicle. So I had to make -- have
20 him do it from the radio, and he was making the announcement
21 as I was talking to the crowd.

22 THE COURT: So you don't know what he said?

23 THE WITNESS: No, not exactly. No, ma'am.

24 Q (By Mr. Relys) Can you remember the -- can you remember
25 the exact script for the dispersal order?

1 A No, I cannot.

2 Q Would it refresh your recollection if I let you look at
3 the script?

4 A Yes, sir.

5 MR. RELYS: Okay. Permission to approach, Judge?

6 THE COURT: Yes.

7 THE WITNESS: Thank you.

8 Q (By Mr. Relys) Have you had a chance to review that?

9 A Yes.

10 Q Okay. You don't need to read off of it, but having had a
11 chance to review that, is your recollection refreshed as to
12 the general content of these dispersal orders?

13 A Yes, sir.

14 Q And can you tell us what it is?

15 A That they were given an order to disperse and leave the
16 area. They were given a direction to leave. They were told
17 why they were being, you know, told to leave and that if they
18 didn't leave that chemical munitions were imminent.

19 Q Okay. Is that -- having looked at that order and having
20 your memory refreshed, is that essentially the script that's
21 followed when these dispersal orders are given?

22 A Yes.

23 Q Okay.

24 THE COURT: But you don't know what they told them
25 about why or the direction they were told to leave in because

1 you couldn't hear it; right?

15

2 THE WITNESS: No, ma'am. You're correct there, yes,
3 ma'am.

4 THE COURT: So when you give this order, do you tell
5 them anything specific, or is it just the discretion of the
6 sergeant in terms of --

7 THE WITNESS: It's the discretion of the sergeant
8 there, you know, inside the vehicle. He can see. They sit up
9 a lot higher than I can see.

10 THE COURT: Right.

11 THE WITNESS: So it's, you know, at their discretion
12 which way we want them to go. Now, if we have areas already
13 blocked off, then he would already know that.

14 THE COURT: Right. But you couldn't hear what he
15 actually said?

16 THE WITNESS: No, ma'am.

17 THE COURT: You just told them to say it?

18 THE WITNESS: Yeah. I --

19 THE COURT: Okay.

20 THE WITNESS: -- you know, give the dispersal order.

21 THE COURT: Give the warning.

22 Q (By Mr. Relys) I want to be clear. How is he -- the
23 dispersal order -- how is it being given?

24 A It's being given over the loudspeaker inside the vehicle.

25 Q So you could -- you could -- at the time, you could hear

1 it?

16

2 A I could hear it, yes, but the actual wording, I don't
3 remember, no.

4 Q You don't remember it?

5 A Correct.

6 THE COURT: But you don't know if he said, "You need
7 to leave because this is an unlawful assembly" or "You just
8 need to leave"? You don't know if he said, "You need to go
9 west; you need to go north"? That's what you're telling me?

10 THE WITNESS: Yes, ma'am.

11 THE COURT: Okay.

12 THE WITNESS: I don't know the verbiage he used. It
13 was --

14 THE COURT: Yeah, but you don't -- even aside from
15 the exact words, when you say "verbiage," even aside from the
16 exact words, you don't know the substance of what he said
17 except "Disperse or chemical agents will be used"? You don't
18 know the substance of where he told them to go or why he told
19 them to do it, which you told me were -- you said there were
20 four things -- order to disperse, the direction to go, why,
21 and if you don't, chemical agents will be used. But you've
22 told me you only remember or know two of those things. You
23 don't know what else he said?

24 THE WITNESS: That's correct.

25 THE COURT: He said disperse or chemical agents will

1 be used?

17

2 THE WITNESS: Yes, ma'am.

3 THE COURT: And you don't know the direction or what
4 he said about why?

5 THE WITNESS: No.

6 Q (By Mr. Relys) And you would have known that at the time?

7 A I observed which direction that some of them left. Yes.

8 Q Sure. And I mean you would have -- you would have heard
9 the dispersal order, though, at the time?

10 A Yes.

11 Q All right. And how many warnings do you think were given
12 at that point?

13 A There were two initial, and then we actually had to
14 deploy the vehicle to get these people to move before we
15 actually took incoming rocks or any type of missiles.

16 Q Okay. And --

17 THE COURT: And so where were you in the vehicle when
18 you gave this, when this warning was given?

19 THE WITNESS: I was on the street, ma'am. I was on
20 the sidewalk, out walking.

21 THE COURT: So you weren't inside the vehicle?

22 THE WITNESS: No, ma'am. No.

23 THE COURT: Where was the vehicle?

24 THE WITNESS: Right next to me in the street.

25 THE COURT: Yeah, but -- but what street?

1 THE WITNESS: Oh, I'm sorry.

2 THE COURT: At City Hall --

3 THE WITNESS: No. We were --

4 THE COURT: -- or at Tucker and Olive?

5 THE WITNESS: We were on Tucker.

6 THE COURT: And where on Tucker?

7 THE WITNESS: We were just past Pine, moving up to
8 Olive.

9 THE COURT: Okay.

10 Q (By Mr. Relys) And where were the folks that you were
11 directing the order to?

12 A They were on Olive, on the north side of the street, west
13 of Tucker. The large group that we were concerned with, they
14 were all along the bank wall there.

15 Q Okay. And tell us again why it was that that group
16 concerned you.

17 A It was a much larger group, but this group stopped and
18 then, you know, again, was taunting or whatever when we were
19 approaching. They started putting on goggles and their masks.
20 Some of them already had masks covering their faces, and they
21 were reaching into their backpacks. Don't know for what.

22 So --

23 Q And you had seen them coming from which direction?

24 A From the east. They actually came across Tucker Avenue
25 from Locust and Olive.

1 Q And did you have any reason to believe that they were
2 potentially affiliated with the group that had been causing
3 damage over there?

4 A Yes, because the bicycles were actually still in the
5 downtown area trying to move people out.

6 Q Okay. So you give the warnings, and what happens next?

7 A There's no dispersal. Some people started moving north
8 and west from us, up 13th Street and then farther east on
9 Olive or west on Olive towards 14th Street, but there was a
10 group of concern right there. So I asked that the ballistic
11 vehicle go around the corner and deploy the PepperBalls.

12 Q And did they do that?

13 A Yes, they did.

14 Q And what was -- did that have any effect on the crowd?

15 A Most of them left. They started running. Some of
16 them -- you know, there was five or six probably stayed. Most
17 of them went north from that location. And then the ballistic
18 vehicle continued west on Olive and then north on 14th Street.
19 During that time, the sergeant inside was continually giving
20 an order to leave, the dispersal order.

21 Q Okay.

22 A You can hear the -- you know, you can hear him on the
23 loudspeaker as the vehicle is going away.

24 Q You could hear him like with your own ears --

25 A Yes.

1 Q -- as he was going north and west?

2 A Yeah, until he got to 14th Street on -- when the library
3 was between us, I couldn't see or hear it any longer.

4 Q Okay. All right. So after -- so that group of
5 protestors ultimately dispersed north, you said?

6 A Most of them. Now, we were -- we took several of them
7 into custody at that time. I believe there was five or six
8 arrests that were made at that time. And as we were making
9 the arrests, the State Highway Patrol struck a line across
10 Tucker on the north side of Olive, and all they did was hold
11 their line on Tucker. The Central Patrol CDT team had finally
12 arrived from 44 and Hampton, got off the buses, and they
13 actually were deploying. We had them strike a line on 13th
14 Street, and they walked up just one block, just on the other
15 side of the church, to Locust, and they held there at Locust.
16 We didn't go any farther at that time.

17 Q Okay. And you said the CDT team arrived. I just want to
18 remind -- could you remind us? The CDT team -- I think you
19 told us earlier. They were coming from a further away
20 location than you were originally?

21 A Yes. Yeah.

22 Q They were summoned at the same time, but they didn't get
23 there until some of the stuff had happened?

24 A Yes. Yeah, that had already happened. We were only
25 coming from Jefferson and Market or Jefferson and Scott, which

1 is a couple blocks down. Excuse me. But the CDT team wasn't
2 staged on the buses. They were at a rally point. So we had
3 to get them on the buses and then have the buses driven from
4 44 and Hampton area.

5 Q So CDT team finally arrives. It sounds like the
6 protestors were sort of in the process of dispersing by that
7 time anyway?

8 A Yeah, the City CDT team, yes. Because of all the issues
9 that were happening downtown and the radio transmissions, the
10 lieutenant colonel didn't want to wait for them to get there.
11 That's why we moved up with just the Highway Patrol at that
12 time.

13 Q Got it. Now, what happens after -- after -- after what
14 you've talked about already here?

15 A We actually held just five, six minutes. After there was
16 no further activity, the colonel asked that the lines be
17 collapsed. We actually had the Highway Patrol collapse. They
18 went back to their vehicles. The City CDT team came back. We
19 got on the buses. They started back towards 44 and Hampton,
20 and then my tactical team and I, we responded back to
21 Jefferson and Scott, and then the arrest teams had taken
22 people into custody. They were already moving to the Justice
23 Center.

24 Q So you all retreated back to your original location?

25 A That's correct.

1 Q All right. Was that the last of your involvement with
2 the protesters that evening?

3 A No, sir, it was not.

4 Q Okay. What happened next that got you involved or the
5 folks under your command involved?

6 A The radio transmissions from the bike officers -- there
7 was larger groups now starting to regather, and they were
8 gathering in the intersection of Washington and Tucker. That
9 became problematic as there continued to be other issues in
10 the downtown area that were affiliated with the entire group.
11 The colonel called us all back down. This time, he asked us
12 to meet him at 13th and Olive, where we had originally
13 disbanded, and we actually started staging at 13th and Olive
14 there, and we brought all three of the City tactical teams,
15 and the bicycle squad was already downtown. So we actually
16 utilized them.

17 Q Okay. And about what time is this?

18 A This is about 10:00, 10:10, 10:15, something like that.

19 Q 10:00 hour?

20 A Yeah, it's around 10:00, yes, sir.

21 Q And once you get downtown and you bring the CDT teams
22 downtown and you stage there at 13th and Olive, what happens
23 after that?

24 A We had actually had Sergeant Rossomanno and Sergeant
25 Jemerson along with Lieutenant Boyher engaging the people

1 downtown, telling them they have to leave. They were giving
2 dispersal orders again at that time. You could hear the
3 loudspeaker. Couldn't hear the actual order themselves, but
4 you could hear people talking on the loudspeaker. Talked to
5 the colonel, and we developed a plan to either disperse as
6 many people as we could, and anybody that would be remaining
7 would be taken into custody.

8 Q Okay. And you talked about some dispersal commands given
9 by -- over the loudspeaker. You were at 13th and Olive?

10 A Yes.

11 Q And where -- from where were these dispersal commands
12 being given?

13 A They were on Tucker.

14 Q Okay. On Tucker about where? Do you know?

15 A There was one, I know, given at Locust because I could
16 see the vehicle there, and then they went farther north
17 towards Washington.

18 Q Okay. So between Locust and Washington on Tucker?

19 A Yes.

20 Q And these commands were given by loudspeaker?

21 A Yes. The ones I heard were by loudspeaker, but we know
22 for a fact that we had two of our sergeants out engaging
23 people on the street, talking to them, because you can hear
24 some of their conversations actually key their microphones and
25 that.

1 Q Okay. And sort of we've gotten a general idea of where
2 the commands were given from and how they were given over
3 loudspeakers. To whom were they being given?

4 A The large groups of people that remained in the streets
5 and that were blocking the streets and not responding to any
6 of the -- you know, any of the requests or the commands to
7 disperse.

8 Q Any particular group of people or was it people that --
9 was there any particular crowd of people, or where were the
10 people, generally speaking, that the orders were being
11 directed to?

12 A They were between -- they were -- the largest crowd was
13 on Tucker, between Tucker and -- or between Locust and
14 Washington Avenue, and then the majority now were on
15 Washington Avenue or right in that intersection of Washington
16 and Tucker.

17 Q How far away were you from the -- from the location where
18 the commands were being given? How many blocks is that?

19 A Olive, Locust, St. Charles. Four.

20 Q Four blocks? And you could hear that commands were being
21 given?

22 A Yes.

23 Q And you talked a little bit about -- so you talked about
24 the commands being given over these loudspeakers. How many
25 commands did you hear?

1 A Five or six.

2 Q Were you able to make out exactly what was being said?

3 A No, sir, I wasn't.

4 Q Would it have followed the script that you've told us
5 about?

6 A Yes.

7 Q You also told us about you had a couple sergeants talking
8 to the crowd?

9 A Yes.

10 Q Tell us about that.

11 A Just to ensure -- these two sergeants in particular work
12 with the CDT more than I do. I only command when there is an
13 incident, but they actually train with these folks, and
14 they've been involved in other incidences. So they know some
15 of the protestors by name and by sight and who may or may not
16 be in charge -- not in charge but a leader in the group. So
17 they would go up and talk to these people and see if they
18 could get cooperation, you know, that they were leaders of
19 this group. They asked these people to disperse. They know
20 them by sight.

21 Q Okay. And you said there's two sergeants?

22 A Yes.

23 Q What are their names?

24 A Brian Rossomanno and Randy Jemerson.

25 Q All right. And your understanding is that during this

1 time period Sergeants Jemerson and Rossomanno were engaging
2 the people who were hanging around?

3 A Yes, sir.

4 Q Okay. How do you know that?

5 A By radio transmissions and then speaking with the
6 commander, the lieutenant colonel. They work directly for him
7 at times, and they were in communication with him also, and I
8 believe he's the one that actually sent them up there because
9 I didn't send them.

10 Q Okay.

11 THE COURT: Where was the lieutenant colonel himself
12 physically?

13 THE WITNESS: He was physically with me at 13th and
14 Olive.

15 THE COURT: Okay.

16 THE WITNESS: He and I were kind of joined at the hip
17 that evening.

18 THE COURT: Okay.

19 Q (By Mr. Relys) Okay. So you heard four or five
20 announcements, or you say you heard about four or five
21 announcements?

22 A Yes, sir.

23 Q Maybe you said five or six. I don't recall what you
24 said. How many announcements about did you hear?

25 A Over five. I know that five, six, something like that,

1 and just on the loudspeaker. I wasn't, you know, close enough
2 to hear when they were engaging these people.

3 Q And these announcements are being -- I think you told us
4 earlier that the plan was to try to get people to disperse but
5 to arrest anyone who doesn't disperse?

6 A Anyone that remained, yes, sir.

7 Q Okay. And who came up with that plan?

8 A Well, the plan was mine, and then I got it okayed by the
9 lieutenant colonel. You know, he had asked, you know, that we
10 have to do something. We can't allow people back into
11 downtown. We can't allow any further property damage. We're
12 either going to have to have them dispersed or arrested.

13 Q Why did you think that if people were allowed to continue
14 to hang out in that particular area that property damage would
15 occur?

16 A That's what had happened the three days prior, and just
17 from that evening, you know, we were able just to get the
18 groups out of the downtown area. Had they not been engaged by
19 the police, I believe there would have been a lot more damage,
20 and had we left them there, I believe there still would have
21 been a lot more damage. We didn't want anything happening any
22 worse than had already occurred.

23 Q Did you think that the folks who were congregated in that
24 general area of Washington and Tucker, Locust and Tucker were
25 the same people who had been chased around earlier in the day

1 by the police?

2 A I do, yes, sir.

3 Q Why do you think that?

4 A They were, you know, again, in the area. They were
5 wearing the backpacks. They were wearing masks and goggles,
6 indicating to me that they wanted some type of confrontation,
7 and the information that we were getting was that was the
8 description of some of the people that were seen leaving the
9 areas by the bike officers and the officers from the Special
10 Operations Unit.

11 Q So you had information that some of the people were the
12 same people?

13 A Yes.

14 Q Not everybody necessarily?

15 A No, no, but, you know, there were quite a few of them
16 that were chased from the downtown area. And the officers
17 were giving descriptions as best they could, and we were
18 hearing that, and lot of these people matched -- not a lot but
19 several of the people matched the descriptions.

20 Q Okay. So we've talked a little bit about the warnings
21 that you heard and the outreach that was done by the
22 sergeants, Jemerson and Rossomanno?

23 A Yes, sir.

24 Q And you told us basically that this is -- the plan is --
25 is that -- to effect a mass arrest at the -- at the end of the

1 situation if people don't disperse; is that right?

2 A Yeah. Our goal was still initially to disperse. You
3 know, we wanted as few arrests as possible, but anybody who
4 did remain was going to be taken into custody at this time.

5 Q Understood. Yeah. I don't want to put words in your
6 mouth there. The goal, as I understand it, wasn't necessarily
7 to make the arrests but to disperse --

8 A That's right.

9 Q -- but the plan was if people did not disperse there
10 would be arrests?

11 A That's correct. Yes, sir.

12 Q All right. At some point, was the decision made to
13 effect a mass arrest?

14 A Yes.

15 Q Okay. And who made that decision and about when?

16 A We, the colonel and I, had discussed this. There was a
17 final announcement made about 11:00, you know, and at about --

18 Q When you say a final announcement, what do you mean?

19 A A final dispersal announcement by Sergeant Rossomanno was
20 made about 11:00. The colonel and I had talked about that.
21 Right beforehand, he said, "Well, we're going to give one more
22 dispersal order. Make sure that, you know, we get that, and
23 then we'll go ahead and move the teams in." So the dispersal
24 order was given about 11:00. We got the teams set up and
25 situated. I had them move to different locations in the

1 buses, and I assured that the Bicycle Unit was now on
2 Washington Avenue preventing anyone from going east on
3 Washington.

4 Q I want to put up a map of this general area for you.

5 Okay. That's a Google Map of Washington and Tucker.

6 A Uh-huh.

7 Q Is that too close? I'm going to ask you -- I want you to
8 tell us about where you positioned the teams. That may be too
9 close in, isn't it?

10 A Yeah. Again --

11 Q I'll put up a different one.

12 A There you go. Okay. That's fine.

13 Q Okay. So about 11:00, you said the final dispersal order
14 was given?

15 A Yes, sir.

16 Q And then -- and then what happened? You said -- tell us
17 what happened next.

18 A I assured that Lieutenant Boyher had his team on
19 Washington Avenue, east of Tucker, right there.

20 Q And Lieutenant Boyher is who?

21 A He is the commander of the bicycle response team.

22 Q Okay. So the bicycles went to that location east of --
23 east of Tucker on Washington?

24 A On Washington, yes, sir.

25 Q And what were they directed to do at that location?

1 A Just hold the street, you know, not let anybody back into
2 the downtown area.

3 Q Okay. So to form a line, basically, not letting people
4 go east past them?

5 A That's correct.

6 Q Okay. Would they let people go west past them?

7 A Yes. Yeah.

8 Q Okay. And then what was the next -- what was the next
9 movement?

10 A I asked -- we had -- my -- where I was at, at 13th and
11 Olive, I had the South Patrol CDT team. So we actually moved
12 out onto Olive. There we go. I asked the North Patrol CDT
13 team -- they got in the buses, and they actually drove up to
14 Dr. King and Tucker.

15 Q Okay.

16 A And they got out at Dr. King.

17 Q So North Patrol team is at Dr. King and Tucker?

18 A That's correct.

19 Q South Patrol team is with you at Olive and Tucker?

20 A Right.

21 Q Okay. What happens after that?

22 A North Patrol or -- I'm sorry -- Central Patrol stayed at
23 13th and Olive.

24 Q And can you link this up for us? We said 11:00 is the
25 last dispersal order. Can you give us an approximation for

1 how these things are unfolding in terms of time?

2 A Between 11:00 and 11:10, we got the teams in place, and
3 then once I got word that everybody was in place and off the
4 buses, it was about a quarter after, you know, 11:15, that I
5 actually had the officers start moving into position.

6 Q Okay.

7 THE COURT: Can I ask you?

8 THE WITNESS: Yes, ma'am.

9 THE COURT: So what you're saying based on -- and
10 you've made little marks on this map.

11 THE WITNESS: Yes, ma'am.

12 THE COURT: So you're saying you were with what you
13 called the south team, and they were at that intersection of
14 Tucker and Olive.

15 THE WITNESS: Yes, ma'am.

16 THE COURT: And then what you called the north team
17 were one block west of that at 13th and Olive?

18 THE WITNESS: No. That's Central. Central.

19 THE COURT: Central team?

20 THE WITNESS: Yes. And then north --

21 THE COURT: Okay. And north team is up at Martin
22 Luther King?

23 THE WITNESS: Yes, ma'am.

24 THE COURT: Yeah. Okay. So central is there. So
25 you've got those two in the same -- basically on the same

1 street?

33

2 THE WITNESS: Correct. Yes, ma'am.

3 THE COURT: Okay.

4 THE WITNESS: Yeah.

5 Q (By Mr. Relys) And the bicycles are holding a line on
6 Washington, east of Tucker?

7 A Yes.

8 Q All right. What happens after that? What's the next
9 movement?

10 A At quarter after, you know, I verified with the
11 lieutenant or the lieutenant colonel, "Okay. We're ready to
12 go. Are we ready?"

13 And he said, "Yes. Go ahead."

14 So I had the north team start moving south. Oop.

15 MR. RELYS: I'm not sure how to make that go away.

16 THE COURT: Well, you can. You can take away just
17 the very last thing.

18 MR. RELYS: What button is that?

19 THE COURT: Try the bottom one.

20 MR. RELYS: There we go.

21 A Okay. Let's see if I can do this again. The North
22 Patrol team actually started moving south. The South Patrol
23 was moving north. And Central Patrol was still moving north
24 on 13th Street. We got -- it took us a few minutes to get to
25 that point. We continued north with the South Patrol to

1 St. Charles, and we held there. The North Patrol was actually
2 moving down past -- which would be Missouri Bar and Grille
3 now. They were past Convention and coming up on Missouri Bar
4 and Grille. And the Central Patrol team had moved up to
5 St. Charles.

6 Q (By Mr. Relys) Why is the Central Patrol moving in
7 parallel with the South?

8 A I was going to have them move to the west side of the
9 protest group but not yet. We still had to give them egress,
10 and I had to have a couple streets cleared before I was
11 comfortable with moving everybody up.

12 Q Okay. Are the bikes doing anything?

13 A No. They're still holding. All they're doing is holding
14 there. They may have moved up a half a block closer to the
15 intersection, but at that time, you know, they were -- all the
16 bikes did was actually hold and keep people from going east.

17 Q Okay. All right. So at this point, approximately -- and
18 again, I'm not -- I don't expect you to know down to the
19 minute, but do we have a sort of idea of what time --

20 A It would be --

21 Q -- the picture that you've painted so far -- what time --
22 what this is?

23 A It may be about 20 after. It may have taken us five
24 minutes to get this far.

25 Q Okay. And so at about, again, approximately, give or

1 take, 20 after --

35

2 A Sure.

3 Q -- we've got the North Patrol team down to just south of
4 Convention Plaza?

5 A Correct.

6 Q We've got the South Patrol team up at around St. Charles?

7 A Correct.

8 Q We've got the bikes holding a line east on Washington?

9 A That's correct.

10 Q And we've got the Central Patrol team that's at
11 approximately --

12 A 13th.

13 Q Help me out with that.

14 A 13th and St. Charles.

15 Q 13th and St. Charles. Thank you. Okay. What happens
16 after that?

17 A As we're holding all three of these positions, I asked
18 the Central Patrol team to come east on St. Charles Avenue,
19 and St. Charles there is more of an alley than it is a street,
20 and we wanted to make sure that there was nobody hiding in
21 there because there are several dumpsters. So we didn't want
22 anybody having any issues or anything like that. And we still
23 wanted to allow time for people to go west on Washington. So
24 I had Central Patrol actually clear the St. Charles Street as
25 everybody else was holding their positions.

1 Q Okay. So the Central Patrol clears St. Charles Street
2 between 13th and Tucker?

3 A That's correct.

4 Q And everyone else holds?

5 A Yes.

6 Q And you mentioned that you wanted to allow -- continue to
7 allow people to go west on Washington at this point?

8 A Yes.

9 Q So at this point, you said -- how many -- you told us a
10 bunch of dispersal orders had been given before this period of
11 time.

12 A Yes, sir.

13 Q Are people still free to leave?

14 A Oh, absolutely.

15 Q Okay.

16 A We would rather have them leave than have to deal with
17 them, to be honest.

18 Q Okay. Is anybody -- are you noticing -- are you able to
19 see from your vantage point if anyone is leaving at this
20 point?

21 A I couldn't see, no. I could not.

22 Q Okay. All right. What happens next?

23 A After they, Central Patrol, cleared 13th Street, I asked
24 them to move back and then told them once they get to 13th
25 Street, move up to Washington Avenue and let me know when they

1 got there. So they actually walked back. It's only, you
2 know, a block, and then they moved through and moved up to
3 Washington Avenue. Once they turned east on Washington
4 Avenue, they advised me that they were on Washington; they
5 were ready to move towards the intersection. At that time,
6 they struck a line west across the street or -- I'm sorry --
7 north and south across the street. And then I gave the
8 command, and all -- the North Patrol actually moved down to
9 the intersection of Washington and Tucker. The South Patrol
10 moved up to the intersection and held there. And Central
11 Patrol moved east and held at the corners of the building.

12 Q Okay.

13 A And because of the geographic design of downtown and
14 that, we actually just stopped on the corners of the
15 intersections and held the CDT lines there.

16 Q Okay. At this point, can people leave?

17 A No, no. Once we got halfway down the block between 13th
18 and 12th, the line was struck from building to building, and
19 everybody that remained was now being detained. They were no
20 longer free to leave. They were going to be arrested.

21 Q Okay. And in your mind, what was the basis for the
22 arrest?

23 A There was still no dispersal. They were still blocking
24 the intersections. They were still a problem in the area. We
25 couldn't leave them there. We didn't know what they were

1 going to do. But the biggest thing is they wouldn't disperse.

38

2 Q Okay. And so when you said that the -- when you were
3 going west on or -- I'm sorry -- east on Washington, you're
4 talking about that sort of marking the -- marking the closing
5 of this maneuver by the progress of that Central CDT team?

6 A Yes. Yeah, they were the last ones to actually close off
7 because, again, we left an egress as long as we could, and
8 then North and South -- excuse me -- got to the intersections,
9 and then Central got there, and that's when, you know,
10 obviously -- excuse me -- we closed the streets off.

11 Q Okay. All right. So once the -- once all four points of
12 the intersection at Washington and Tucker are closed off by
13 the three CDT teams and the bike line --

14 A Yes, sir.

15 Q -- what happens after that?

16 A This was about 25 after, and the protest group, on their
17 own, kind of migrated to the northeast corner of the
18 intersection. At that time, I asked that all the arrest teams
19 move in, start taking people into custody. And then the
20 arrest teams -- I ensured that they actually came through the
21 lines because as our -- as the teams are formed, the arrest
22 teams stay behind the line that's struck. So we actually open
23 up a space, and then the arrest teams move in from behind the
24 line. So they moved in and started taking people into
25 custody, giving them commands to sit down, lay down, put their

1 hands behind their back, and, you know, demanding compliance
2 at that time. Again, they were arrestees. They weren't
3 bystanders. They weren't -- they were being detained pending
4 their arrest.

5 Q Okay. And where were you present? Were you present
6 during these arrests?

7 A I was.

8 Q Okay. Where were you?

9 A I was in the intersection, about 35, 40 feet south and
10 west. Again, I wasn't responsible for the arrest teams. I
11 just had to ensure that they were maneuvering into place and
12 doing what they were supposed to, and then we had to, again,
13 still secure the perimeter, and I also had force protection
14 that I had to ensure that was being taken care of.

15 Q Okay. Did the arrest teams move into place?

16 A They did.

17 Q Did they effect the arrests?

18 A They did.

19 Q All right. I'm sure you're aware that in this case
20 there's allegations that pepper spray and such was used during
21 these arrests.

22 A I am.

23 Q Did you see any pepper spray being used during the
24 arrests?

25 A I did at one point, yes.

1 Q Tell us about that.

40

2 A There was a uniform sergeant that had two people that
3 were standing up, and most other people were either sitting or
4 most of them were laying, and he had actually deployed a
5 pepper fogger at the two people that were standing up.

6 Q And tell us what a pepper fogger is.

7 A All it is is a larger can of the OC pepper spray that the
8 individual officers carry, only it comes out in a little bit
9 larger mist, and it's a larger can of it than the smaller
10 stream spray that the officers carry on their belts, but it's
11 oleoresin capsicum. It's -- it's pepper spray is what it is.

12 Q Did you witness -- well, you're familiar with the
13 department's use-of-force policy?

14 A Yes, sir, I am.

15 Q And the policy on the use of pepper spray?

16 A Yes, sir, I am.

17 Q Anything about the use of that pepper spray that you saw
18 that you thought violated or was problematic under the policy?

19 A No, sir, not at all.

20 Q Explain why the use of that pepper spray in that instance
21 that you saw was acceptable?

22 A The use of the pepper spray in the force continuum is
23 right after the officer is giving commands and not getting
24 compliance. It's -- the force continuum to that point is just
25 officer presence and then the officer giving commands, and

1 then when their commands are not met, they are authorized to
2 use pepper spray to gain compliance before they go hands-on
3 with anyone.

4 Q And based on what you saw in that instance, tell us why
5 pepper spray would have been appropriate.

6 A There was noncompliance by several people, and, you know,
7 obviously, there were some people that were complying that had
8 no issues at all, and there were some people that were not
9 complying that they had to, you know, again escalate the force
10 continuum and use the pepper spray.

11 Q How many people were in that intersection, you know,
12 police officers and arrestees included? I mean if you know
13 approximately.

14 A Approximately, 275, 300.

15 Q Okay. Did you see anybody else pepper sprayed during
16 that mass arrest?

17 A I did not, no.

18 Q Okay. Do you know if other people were?

19 A I do know there were, yes.

20 Q Okay. How do you know that?

21 A Because of the reports that came in afterwards of the
22 resisting arrests we had. Anyone that is pepper sprayed is
23 charged with resisting arrest.

24 MR. RELYS: Judge, I have a copy of the department's
25 policy on mace. It hasn't been made a part of the record so

1 far. So there's a --

42

2 THE COURT: Any objection?

3 MR. ROTHERT: We disclosed exhibits earlier, and this
4 one wasn't. So I don't think there's an objection, but we
5 only saw it a few minutes ago. So we'd like to reserve until
6 after a break any objection. I doubt there will be an
7 objection, but --

8 THE COURT: Can he ask him about it now, or are you
9 going to --

10 MR. ROTHERT: Yes, he can ask him about it.

11 MR. RELYS: Okay.

12 THE COURT: Okay. Go ahead. Is this an exhibit?

13 MR. RELYS: Yeah, I'm going to make it an exhibit.

14 This will be, I believe, our first exhibit. So we'll call
15 it -- I think I have other exhibits up to K or up to J, so I'm
16 going to call this Exhibit K.

17 THE COURT: Okay.

18 MR. RELYS: Permission to approach, Your Honor?

19 THE COURT: Yes.

20 Q (By Mr. Relys) Lieutenant, I've just handed you what --
21 you don't have a marked copy, but I'll represent I've got a
22 marked copy in my hand as Exhibit K.

23 A Yes, sir.

24 Q Can you take a look through that and just tell me if you
25 recognize that document?

1 A I do, sir. This is part of our special order on the use
2 of force. It's Section IV.

3 Q I'd like you to just sort of -- you know, this is several
4 pages. It's several pages in length. Several pages in length
5 obviously. So I don't want you to go through every -- you
6 know, every last line of it, but could you briefly summarize
7 the department's -- what the policy is for the use of mace?

8 A Yeah. Pepper mace is provided when the use of force is
9 necessary to control belligerent, uncooperative persons for
10 whom verbal commands are ineffective. The product is designed
11 to be used as an alternative to physical contact between the
12 officer and a person. It goes on to explain what it's made
13 out of, you know, the red pepper and that, and how it will
14 affect people, and then it goes into the --

15 MR. RELYS: I'm going to stop you there for just a
16 second.

17 Judge, I've got an extra copy. Would you like one?

18 THE COURT: Yeah. Go ahead. I'm going to --

19 MR. RELYS: I've got a paper copy.

20 THE COURT: I mean I'll hear any objections. I'll
21 take it subject to the objections. Because what you marked
22 before was Section I of this order. This is Section IV;
23 right?

24 MR. RELYS: What's been submitted with the materials?

25 THE COURT: Right.

1 MR. RELYS: Yeah.

2 THE COURT: Okay. Go ahead.

3 Q (By Mr. Relys) Continue, Lieutenant.

4 A And then it goes on. You know, the general procedures.
5 An officer may use pepper mace, and it explains that an
6 officer -- to effect a lawful arrest or otherwise lawfully
7 control a combative, uncooperative person, when verbal
8 commands or persuasion have been ineffective in inducing
9 cooperation. And it goes on to state, you know, we can deploy
10 for animals, you know, to control a dangerous animal, and, you
11 know, when we cannot use it, and, you know, they specifically
12 say you cannot use this when someone is being controlled by a
13 neck restraint.

14 Q Okay.

15 A And then most everything else goes on to that you have to
16 charge a person with resisting arrest and then how to handle
17 it and then the reporting procedures, you know, as far as
18 completing a police report and that type of thing.

19 Q What's the -- generally speaking, backing up to the
20 department's general use-of-force policy --

21 A Yes, sir.

22 Q -- I understand that there's sort of a continuum. Is
23 that right?

24 A Yes, sir, there is.

25 Q Okay. Could you just tell us a little bit about the

1 use-of-force continuum?

2 A The use-of-force continuum is how we actually handle
3 people and how we escalate based on whatever response we get
4 from people when we have to take them into custody. Most of
5 the time, it's just, you know, our presence and verbal
6 direction. "Put your hands behind your back." Most people
7 cooperate. If not, there are some people that don't want to
8 go to jail, don't want to be arrested, so we have to escalate
9 as far as we usually stay one step above what they do.
10 Sometimes, depending on the size of the officer or the size of
11 the person involved, they may go two steps above, but there is
12 a continuum as either, you know, incooperative or belligerence
13 can increase, or if there's an assault on an officer, that we
14 actually increase the force continuum.

15 Q Okay. And sort of it sounds like verbal command is low
16 on the continuum?

17 A Very low, yes, sir.

18 Q And let's say that there's an escalation. Sort of take
19 us through what an escalation would look like on the
20 continuum.

21 A It would be noncompliance and then, you know, someone
22 actively noncomplying, refusing to -- you know, other than
23 telling, "Hey, I'm not going to do it," there will be active
24 noncompliance, you know, either ignoring or arbitrarily acting
25 against the command.

1 Q Okay.

2 A Then there will be, you know, some type of physical,
3 either a restraint -- they would either pull away or they
4 would actually try to assault the officer, once we have to go
5 hands-on, but there are a couple of steps that we have before
6 we actually try to go hands-on. That's one of the last things
7 we like to do.

8 Q Okay. And between hands-on and verbal commands, what do
9 we have?

10 A You have the use of pepper mace and the use of a Taser.
11 Again, most of those, you know, again, we have escalated to
12 the point where we can't control these people; they're not
13 complying; they are going to jail; it's a lawful arrest; but
14 we don't want to have to go to hands-on with them, so we try
15 to get compliance with pepper mace and we try to get
16 compliance with the use of a Taser.

17 Q Why don't you want to go hands-on? Why is -- let me
18 rephrase that or ask a different question.

19 A Sure.

20 Q Why is mace, let's say, preferable to going hands-on?

21 A A lot of times, we can get compliance because the people
22 understand, hey, you know, we are going to use whatever force
23 we need to, and when they can't see, they have a hard time
24 breathing, a lot of people understand it's time to go to jail,
25 and the officer still doesn't have to fight and wrestle with

1 these people to try to, you know, forcibly handcuff them.

2 Q Are there any safety issues that make mace preferable to
3 hands-on?

4 A Most everything is preferable to hands-on. You don't
5 know what anybody knows how to do or if they're going to
6 assault you, what type of person they are, and a lot of our
7 officers aren't in either the greatest shape or the largest
8 physical specimens. So they have to gain compliance with
9 these type of implements or equipment we have to effect a
10 lawful arrest.

11 Q Okay. We've heard some testimony in this case from
12 witnesses who are claiming that during this mass arrest they
13 were zip-tied with their hands behind their backs and pepper
14 sprayed, after they were zip-tied, in the face. Just based on
15 those facts that I've told you, would that be compliant with
16 the policy?

17 A No, that would not.

18 Q Okay. Why not?

19 A These people are in custody. They are handcuffed. And,
20 you know, unless they are kicking at the officer or engaged in
21 an assault or something to that effect, it wouldn't be prudent
22 for the officer to deploy a chemical because, again, now we've
23 gone hands-on and we have them in custody. So all we have to
24 do is get additional officers, lift them up, and move them.

25 Q So it sounds as though a person who is zip-tied and under

1 arrest, you can imagine scenarios in which mace may still be
2 appropriate?

3 A Yes, yeah, if they're still assaulting or, you know,
4 trying to prevent them from being moved, if they're kicking at
5 the officers, rolling from side to side, and not allowing the
6 officers to actually take physical custody of them, you may
7 have to deploy some mace again.

8 Q But if they're -- if they're completely compliant,
9 they're not kicking, they're not -- they're complying with
10 whatever directives they're given, it would be inappropriate
11 at that point to mace them?

12 A That's correct, yes.

13 Q Now, I've given you a series of hypotheticals
14 obviously --

15 A Uh-huh.

16 Q -- and asked you to sort of talk about the policy and how
17 it would relate to those hypotheticals.

18 A Yes, sir.

19 Q You told us earlier that you didn't see any of those type
20 of situations occurring?

21 A No, sir, I didn't.

22 Q Okay. Not on that --

23 A If I did, I would have to act on that.

24 Q Not on that Sunday night?

25 A No, sir, I did not.

1 Q I'm sorry. You said something about act on it?

2 A As a commander of a unit, if I see something that is
3 outside of the special order, it is incumbent upon me to make
4 sure that there is an allegation prepared against the officers
5 if they step out of line or they don't comply with our
6 policies.

7 Q And you didn't have -- you didn't see the need to do that
8 that evening?

9 A Absolutely not.

10 MR. RELYS: Okay. At this time, Judge, I would move
11 to admit Defendant's Exhibit K into evidence.

12 THE COURT: I'll reserve ruling if you want to look
13 at it.

14 MR. ROTHERT: There's no objection.

15 THE COURT: Okay. Exhibit K is received.

16 MR. RELYS: Thank you.

17 THE COURT: I mean, frankly, I would ask for it if it
18 weren't -- I mean I want to see what it says. I need it.

19 Q (By Mr. Relys) Lieutenant Sachs, are you -- are you also
20 familiar with the department's policy or, I guess, does the
21 department have a policy relating to persons who wish to
22 record police activity?

23 A Yes, sir, we do.

24 MR. RELYS: And I'm going to put what's been
25 previously marked as Defendant's Exhibit D up on the ELMO

1 here.

50

2 Well, permission to approach?

3 THE COURT: You may.

4 Q (By Mr. Relys) I'm going to give it to you and just ask
5 you to take a look through it.

6 A Sure, yeah.

7 Yeah, this is Special Order 1-06, yeah.

8 Q Okay. And I'm going to go ahead and take it back.

9 A Oh, I'm sorry. Yeah.

10 Q Sorry. Tell me -- you've identified Special Order 6?

11 A Yes, 1-06.

12 Q 1-06. What is Special Order 1-06?

13 A It's the policy for recording of police activity.

14 Q And is the Exhibit D that I handed you a true and correct
15 copy of that special order?

16 A Yes, sir.

17 MR. RELYS: Okay. I would, at this time, move to
18 admit Defendant's Exhibit D.

19 THE COURT: Any objection?

20 MR. ROTHERT: No objection.

21 THE COURT: Exhibit D is received into evidence.

22 Q (By Mr. Relys) All right. And I don't -- you don't have
23 a copy of it. I'm happy to flip the pages as necessary, but
24 could you just tell me; what is the policy regarding -- what's
25 the police department's policy regarding persons who are

1 recording police activity?

2 A Bystanders are allowed to record activity at their
3 leisure as long as they don't interfere with the police
4 activity that they're recording.

5 Q Okay. So if someone's -- if someone's recording and
6 they're -- well, strike that. The simple fact that someone's
7 recording would not be grounds for arresting someone?

8 A That's correct.

9 Q Okay. Are you aware that in this case there's
10 allegations that people were arrested on the Sunday night,
11 September 17th, for recording?

12 A I don't know that anyone was arrested for recording
13 anything, no.

14 Q Okay. Are you aware of any instances where that
15 occurred?

16 A That they were arrested for recording something?

17 Q Correct.

18 A Not at all, no.

19 Q What were the -- what was the reason for the mass arrest
20 there at Tucker and Washington?

21 A The people were blocking traffic. They failed to
22 disperse when given the commands.

23 Q Did it matter, from your perspective as the commander on
24 the scene, whether they were recording or not?

25 A No. A lot of times that helps us.

1 Q Okay. A person who's recording police -- are they
2 allowed to -- once it's been determined that they are going to
3 be arrested, are they allowed to continue recording?

4 A Not after they've been -- you know, it's been determined
5 they are going to be arrested. Now, this pertains to
6 bystanders.

7 Q Okay.

8 A Once you're going to be arrested, you -- you know, you
9 are given commands. Now, if it doesn't interfere with the
10 commands you're given, they can record until that time.

11 Q I'm going to direct your attention to the second page of
12 three of this special order, paragraph (B)(2). Is that where
13 you're talking about the bystanders?

14 A Yes, sir.

15 Q Okay. It says, as a result, officers must understand
16 that any bystander has an absolute right to photograph and/or
17 video record the enforcement actions of any police officer so
18 long as the bystanders do not take a number of actions; right?

19 A That's correct. Yes, sir.

20 Q And so the folks who were arrested on Sunday night,
21 Sunday, September 17th -- were those people bystanders?

22 A No, they were not.

23 Q Why were they not bystanders?

24 A They were being detained and arrested. So they were no
25 longer free to leave. They were arrestees.

1 Q Regardless of whether they were recording?

2 A That's correct.

3 Q Regardless of whether they were media?

4 A That's correct.

5 Q Regardless of whether or not they say they were just
6 observers?

7 A Again, that's correct. They were taken into custody,
8 yes, sir.

9 Q And I think we've talked -- we've talked a lot about the
10 dispersal orders and such. Is there an applicable order that
11 deals with that as well?

12 A Yes, sir. It should be the very last section of 1-1.

13 MR. RELYS: Permission to approach.

14 THE COURT: You may.

15 Q (By Mr. Relys) Lieutenant, I've handed you what's been
16 marked as Defendant's Exhibit C. Would you identify that for
17 us?

18 A Yes.

19 Q Tell me if you recognize it.

20 A I do. It's Section XIII of Special Order 1-1. It has to
21 do with the deployment of chemical munitions for crowd control
22 dispersal.

23 MR. RELYS: Thank you.

24 At this time, I'd move for the admission of
25 Defendant's Exhibit C.

1 MR. ROTHERT: No objection.

2 THE COURT: Exhibit C is received into evidence.

3 And D also, I assume, you want in evidence?

4 MR. RELYS: I did. Thank you, Judge.

5 THE COURT: Yeah. So D is also received into
6 evidence.

7 Q (By Mr. Relys) And, again, this is a two-page order. So
8 I don't want you to read the whole thing to us, but could you
9 tell us, generally speaking, what -- what the special order --
10 Section XIII of Special Order 1-01 says about the use of
11 chemical munitions as to it being used to disperse crowds?

12 A Yeah. We can use chemical munitions to disperse crowds.
13 They are only to be used by tactical units, which would be my
14 SWAT unit. It's the use of chemical agents, and, you know,
15 it's not to be used, you know, for the purpose of frightening
16 or punishing any individuals. It's just to be used, you know,
17 to disperse them.

18 Q And does this special order cover the use of handheld
19 pepper spray?

20 A Yes.

21 Q Handheld pepper spray?

22 A I believe on the next page it says something about
23 sergeants being issued foggers. Or, no, I'm sorry. No, this
24 one doesn't. It was -- it was in the -- the one you've
25 already admitted.

1 Q Okay.

2 A Yeah. I'm sorry.

3 Q So I'm going to ask you the question again. I think --
4 does the -- this deals with dispersal of crowds; right?

5 A Yes, it does.

6 Q And does this -- "chemical agent equipment" is defined in
7 paragraph (A)?

8 A Yes, sir, it is.

9 Q Is handheld mace included in that definition?

10 A No. Oh, no, that is not. No.

11 Q Okay.

12 A The foggers and the spray are not. No. This is just the
13 chemical munitions that my team uses.

14 Q Okay. And so paragraph (C) deals with restrictions on
15 deployment here; right?

16 A That's correct.

17 Q Those restrictions do not necessarily apply to the
18 handheld mace?

19 A No, not at all. This is -- this is for the munitions
20 that the tactical team uses.

21 Q Okay. And is this a -- is this the order that you follow
22 when you give the dispersal orders that we've been talking
23 about?

24 A Yes, sir. Yes, sir.

25 Q To the best of your knowledge, has this order been

1 followed throughout the police response to the unrest since
2 September 15th?

3 A Yes, it has.

4 Q Are you familiar with the *Templeton* settlement agreement?

5 A Somewhat. I've never read it, but I've heard people talk
6 about it, yes, sir.

7 Q Subsection (C) of this special order, Defendant's Exhibit
8 C, makes reference to a settlement agreement in the U.S.
9 District Court.

10 A Yes, it does.

11 Q Is it your understanding that that's the *Templeton*
12 agreement?

13 A Yes, it is.

14 Q Or the *Templeton* case?

15 A Yes, sir, it is.

16 Q Okay. So this was a special order that's been
17 implemented pursuant to that settlement agreement?

18 A Yes, sir.

19 Q Were you -- were you in the command of the tactical team
20 or the tactical units at the time of that agreement?

21 A No, sir, I was not.

22 Q When did you -- when did you -- tell us again. I think
23 you told us yesterday morning, but when -- or yesterday
24 afternoon. When were you -- when were you assigned or given
25 your current assignment?

1 A February of 2016. February 1st of 2016.

2 Q Okay. And when you were made -- when you were given your
3 current assignment, were you made aware of the *Templeton*
4 agreement?

5 A Yes, I was.

6 Q And were you made aware of the special order?

7 A Yes, I was.

8 Q And have you -- have you, in your capacity as commander
9 of the tactical units for the St. Louis Metropolitan Police
10 Department, made it your mission to follow this special order?

11 A Yes, sir.

12 MR. RELYS: I have no further questions at this time.

13 THE COURT: Okay. I think we'll take a 10-minute
14 recess. So court will be in recess for 10 minutes.

15 (Court recessed from 1:05 p.m. until 1:16 p.m.)

16 THE COURT: You can resume the stand.

17 All right. You may cross-examine.

18 CROSS-EXAMINATION

19 BY MR. ROTHERT:

20 Q Good afternoon, sir.

21 A Good afternoon.

22 Q You mentioned that St. Louis County Police and, I think,
23 Missouri Highway Patrol have been involved in activities in
24 the city since the 15th. Is that right?

25 A Yes, sir.

1 Q Yes?

2 A Yes, sir.

3 Q And you said there's an agreement between -- amongst all
4 of you?

5 A That's my understanding. Yes, sir.

6 Q Okay. Do you know what that agreement is?

7 A Oh, I do not, no.

8 Q Okay. Do you know who's in charge of St. Louis County
9 Police or Missouri Highway Patrol while they're operating in
10 the city of St. Louis?

11 A I do not.

12 Q You are not in charge of them?

13 A No, I am not.

14 Q CDP stands for what?

15 A CDT?

16 Q CDT. Okay.

17 A Civil Disobedience Team.

18 Q Okay. And what is civil disobedience?

19 A It's any type of disobedience contrary to the laws and
20 accepted actions of people.

21 Q Okay. Have you ever heard of any use of civil
22 disobedience to -- in a nonthreatening way, or is civil
23 disobedience always threatening?

24 A No. It's -- I mean, again, demonstrations and nonviolent
25 protests are very viable, yes.

1 Q I'm talking about civil disobedience. Do you think that
2 all protests are civil disobedience?

3 A No, not at all is what I'm getting at.

4 Q Right.

5 A I guess civil disobedience would be where there is
6 criminal activity.

7 Q Okay. And is that violence only, or could it be
8 nonviolent?

9 A No. It could be nonviolent as much as, you know, failing
10 to allow traffic through, impeding the flow of traffic. That
11 doesn't have to be violent, but, again, it's civil
12 disobedience, and it's against the law.

13 Q Very well. And the civil -- the folks -- you're familiar
14 with the term "riot gear"; correct? Do you know what I mean
15 when I'm saying "riot gear"?

16 A I assume you're referring to the protective gear that the
17 officers wear.

18 Q Well, not every officer. If you're -- I'm talking about
19 like masks and shin guards and long sticks.

20 A That's a protective gear that the officers are issued,
21 yes.

22 Q Okay. Do all officers wear that?

23 A The officers that are trained with it and assigned to the
24 CDT teams, yes.

25 Q Okay. So would it be fair to call that CDT protective

1 gear? Is that -- I want to know what to call that.

2 A Yes. I mean that's what you -- I didn't hear you.

3 Q Oh.

4 A Protective gear?

5 Q CDT protective gear -- would that be a fair --

6 A Yes, yeah.

7 Q -- thing to call that?

8 A Yes.

9 Q And does --

10 THE COURT: Hold on a second. Can you move your
11 chair up a little closer to the --

12 THE WITNESS: Yes, ma'am. I'm sorry.

13 THE COURT: Thank you. Go ahead.

14 Q (By Mr. Rothert) Does that team wear the CDT protective
15 gear whenever it goes out?

16 A No, it does not.

17 Q Yesterday, you indicated that the use of chemical
18 munitions is sometimes a de-escalating tactic. Is that
19 correct? Do I understand that correctly?

20 A I don't believe you understood correctly.

21 Q Okay. Could you explain to me what role chemical
22 munitions might play in --

23 A That is more of a dispersal than de-escalation.

24 Q So you would agree that the use of chemical munitions
25 does not de-escalate situations; correct?

1 A I don't know that I could arbitrarily say that either.

2 Q Well, how about instead of "arbitrarily," in your
3 experience, have you ever seen the use of chemical munitions
4 de-escalate?

5 A In my experience, no, sir, I have not.

6 Q Did you watch any of the videos that have been submitted
7 in evidence in this case or with the preliminary injunction
8 papers?

9 A I'm -- I have watched videos. I don't know what has been
10 submitted.

11 Q Okay. And in those videos you watched, did you see any
12 violations of -- in your view -- of any police department
13 policies regarding the use of force or --

14 A No, sir.

15 Q -- the use of pepper spray?

16 A No, sir.

17 Q Okay. What's your understanding of when an assembly can
18 be declared or made unlawful?

19 A I don't believe there is any line in the sand, if you
20 would. It all depends on the actions of the people involved
21 in it.

22 Q Okay. So what actions -- well, who decides, first of
23 all, that an assembly is unlawful?

24 A It's usually -- you know, it can be the officers on the
25 scene, okay, the immediate officers there, or it can go all

1 the way up to the incident commander.

2 Q Okay. And is that just in their discretion to decide
3 when an assembly becomes unlawful?

4 A It depends on the actions, again, of what the officers
5 are observing or they're being told has happened.

6 Q Okay. So is --

7 THE COURT: Is it your testimony there's no guidance
8 or rules; it's just whatever a particular person thinks is
9 unlawful?

10 THE WITNESS: There is nothing written. That's
11 correct, Judge.

12 THE COURT: So any individual police officer at any
13 point can just say, "In my opinion, this is unlawful"?
14 There's no rules?

15 THE WITNESS: That's correct.

16 THE COURT: Okay.

17 Q (By Mr. Rothert) And when an unlawful assembly is
18 determined, is it everyone who's in the assembly that's part
19 of an unlawful assembly is your understanding?

20 A No. It depends, again, on the individual's
21 participation.

22 Q Okay. Tell me what their participation has to be so that
23 they would be part of an unlawful assembly.

24 A It would just be active participation in whoever decides
25 in their opinion that they are part of that group.

1 Q Okay. And when you say "whoever decides," is that a
2 police officer that makes that decision?

3 A In my -- in my world or in my realm, yes, it's a police
4 officer that makes that decision.

5 Q Turning your attention to September 17th, you indicated
6 somewhat passively that -- a passive voice -- that windows
7 were broken and property damage was done around 8:30 or 8:00
8 or 8:30 p.m. Is that your understanding?

9 A Yes, sir.

10 Q Okay. And where was that property damage? Where in the
11 downtown area?

12 A I believe it was on Locust and Olive. Again, I didn't go
13 into the downtown area.

14 Q Okay. Now, Locust and Olive are parallel streets;
15 correct?

16 A Yes.

17 Q Okay. Do you know -- do you have any idea on what cross
18 street there was damage?

19 A I do not, no.

20 THE COURT: So somewhere along Locust and Olive?
21 Olive goes all the way out to the park.

22 THE WITNESS: Well, I mean -- well, it was east of
23 Tucker. I know that.

24 THE COURT: Okay. Thank you.

25 THE WITNESS: It was in the down -- yeah, the

1 immediate downtown area east of Tucker.

2 Q (By Mr. Rothert) Okay. And how far do Locust and Olive
3 go east?

4 A Broadway.

5 Q Broadway. Okay. And how many blocks do you think there
6 are between Broadway and Tucker?

7 A Eight. I'm sorry. You meant Broadway and Tucker;
8 correct?

9 Q Yes.

10 A Yeah, about eight. Yeah, about eight blocks.

11 Q Okay. And between Washington and Olive, how many blocks
12 is that?

13 A Four, I believe.

14 Q So you mentioned that windows were broken. Potted plant.
15 The people who did that -- they were arrested, weren't they?

16 A I do not know.

17 Q Okay. And that was around 8:00 or 8:30?

18 A That's correct.

19 Q Are you aware of any property damage that happened after
20 8:30 on September 17th in the downtown area?

21 A No, I'm not.

22 Q Now, later that evening, at -- well, you said Olive and
23 Tucker by the bank. Is that the Bank of America that's --
24 that you're talking about or --

25 A I would have to look. I know it's a bank, and I think it

1 is. It's red and blue signage. So I think it's the Bank of
2 America.

3 Q Okay. There was a dispersal order given there; correct?

4 A Yes.

5 Q And that was at your direction?

6 A That's correct.

7 Q And what time was that?

8 A For an exact time, I'd have to look at the radio tapes.

9 It was somewhere between 8:00 and 9:00.

10 Q Okay. Was it before or after the property damage had
11 been done that you said happened between 8:00 and 8:30?

12 A Directly after.

13 Q Okay. So it was after 8:30 but before 9:00?

14 A Again, I'd have to look at the radio tapes to give you an
15 exact time, but yes.

16 Q And you don't know how far away from the property damage
17 Olive and Tucker is because you don't know where the property
18 damage is?

19 A They were on those streets, but, no, I do not know the
20 addresses of the buildings or the --

21 Q What was your basis for ordering people to disperse?

22 A Because of the damage and the groups not leaving the area
23 and then them wearing facial coverings to keep their
24 identities hidden, putting on equipment that would prevent or
25 provoke us to use some type of chemical.

1 Q Now, surely no one could provoke you to use chemicals by
2 wearing something, could they?

3 A Yes.

4 Q Okay. As far as you know, the people who had broken the
5 windows were already arrested; right?

6 A No. I told you before I did not know that.

7 Q You don't know either way?

8 A That's correct.

9 Q All right. And do you know how many people were involved
10 in breaking windows somewhere around Olive and Locust?

11 A I do not.

12 Q Okay. So there's a group of people at Olive and Tucker.

13 How large is that group?

14 A When they came across the street, 20 to -- 20 to 40, 45.
15 There was a large group of them. Yes, sir.

16 Q Twenty to 45 is a -- is a pretty big range. Do you have
17 a -- can you pinpoint it any better than that?

18 A No.

19 Q All right. So you believe some of them may have been
20 involved in --

21 A Yes.

22 Q -- the window breaking? Okay. And facial covering --
23 can you think of any reason why anyone around the police in
24 St. Louis might carry a facial covering with them other than
25 to hide their identity?

1 A The only folks that I would think of right away would be
2 folks for their religious reasons.

3 Q Uh-huh. Any other reasons?

4 A Not in this weather, no.

5 Q Okay. Now, members of the media regularly wear masks
6 when they come around protests, don't they?

7 A I'm not sure about that.

8 Q Okay. And people carry backpacks around St. Louis?

9 A Yes.

10 Q Okay. And that's a pretty ordinary thing to happen?

11 A To the extent that under different circumstances it would
12 be, but what we had experienced in the days prior, it led us
13 to believe that there was something other than a normal
14 carrying of a backpack, yes.

15 Q Okay. So based on what had happened days ago, you were
16 worried about people carrying backpacks?

17 A Just in the last 48 hours of this incident, yes. Not
18 days ago, but 48 hours, yeah.

19 Q Okay. How many days is 48 hours?

20 A Two.

21 Q All right. Now, you testified that people were dressed
22 in a way that they were looking for a confrontation. Is
23 that -- is that accurate?

24 A No, it's not.

25 Q You did not say that? Okay.

1 A No. Your statement was not accurate.

2 Q Okay. Tell me what you said about people looking or
3 appearing or dressed like they might want a confrontation.

4 A I said when they put on masks and goggles after they see
5 the police, that would lead me in that direction, and that is
6 just one item.

7 Q Okay. Now, when -- when these folks were putting on
8 goggles and masks, you say -- how many of them were putting on
9 goggles and masks?

10 A I don't have an exact number. There were four or five
11 that I saw personally.

12 Q Okay. Out of up to 45?

13 A Correct.

14 Q Were any of the police officers around wearing any masks
15 or helmets?

16 A Helmets, yes. Masks, no.

17 Q Were those helmets indicating that they were looking for
18 a confrontation?

19 A I couldn't answer that for you.

20 Q Okay. Now, you're not aware of any property damage
21 happening in downtown St. Louis after that 8:00 to 8:30, are
22 you?

23 A No, I am not.

24 Q So the final dispersement warning -- you authorized that
25 dispersal too?

1 A I did not.

2 Q Okay. Who authorized -- it was your idea -- this kettle
3 thing; right?

4 A Again, I don't know what you're referring to. What my
5 idea --

6 Q Have you ever heard of the term "kettle"?

7 A Not until the day after when I saw it in the paper.

8 Q Okay. What's your understanding of what a kettle would
9 be?

10 A A kettle is something that you put food in.

11 Q Okay. Do you have any other understandings related to
12 law enforcement?

13 THE COURT: Well, are you just asking him what he
14 read in the paper? He just said he never heard it before he
15 read it in the paper.

16 MR. ROTHERT: Well --

17 THE COURT: I mean, can you call it something else so
18 we don't waste time going over --

19 MR. ROTHERT: Well, that's what I'm trying to do. If
20 we could agree on the definition.

21 THE COURT: So in all your years in law enforcement,
22 until you read it in the paper the day after this incident,
23 you'd never heard the term?

24 THE WITNESS: That's correct, Judge.

25 THE COURT: Okay. Now let's just go on and call it

1 something else and ask him about what happened.

2 Q (By Mr. Rothert) The tactic that was used of coming in
3 all directions and around the group that hadn't dispersed, you
4 say --

5 A Yes.

6 Q -- does that tactic have a name?

7 A No.

8 Q Okay. Had you ever used it before?

9 A I had not had to use it, no.

10 Q Okay. But did you just come up with that idea that
11 night?

12 A You're going to have to help me. What idea?

13 Q The idea of coming at a group from all four sides and
14 locking them in and making a mass arrest.

15 A Preventing people from escaping or leaving the area once
16 we determined that was based on the geographical area. That's
17 why we struck lines in the four -- the four corners, if you
18 would.

19 Q Okay. Can we just call that striking lines in the four
20 corners? You know what I'm talking about if I say that?

21 A If you want to refer to it as that, yes, then I can
22 relate to that, yes.

23 Q Okay. The final dispersement announcement before you
24 struck the line in the four corners occurred where?

25 A I believe it was just south of Washington on Tucker,

1 between Locust and Washington.

2 Q And where you were, you couldn't understand what the
3 dispersal order said; right?

4 A You're correct, yes.

5 Q You could hear it, but you couldn't understand?

6 A You're correct.

7 Q And that was actually at 10:50 p.m.?

8 A The final dispersal was at 2301.

9 Q And who gave the final order?

10 A Sergeant Rossomanno.

11 Q Who was the incident commander?

12 A The incident commander would have been Colonel Leyshock,
13 Gerald Leyshock.

14 Q Okay. So is it possible he gave that final order --
15 Mr. Leyshock?

16 A No.

17 Q So if Mr. Rossomanno states that he gave a dispersal
18 order, the last one he gave was at 10:50, would you believe
19 him if he said that under oath?

20 A I would believe he gave one then if he told me.

21 Q Okay.

22 A But I have radio documentation that there was one given
23 at 2301. So I don't know what his recollection was.

24 THE COURT: Well, let me ask you this.

25 THE WITNESS: Yes, ma'am.

1 THE COURT: Did you have that radio documentation
2 when you signed the affidavit you filed in this case last
3 week?

4 THE WITNESS: No, ma'am. I got that afterwards.

5 THE COURT: Okay. So when you said in there that it
6 was at 10:50, you were mistaken?

7 THE WITNESS: That was the last I knew when I signed
8 the document, yes, ma'am.

9 THE COURT: And so since then, what did you find out?

10 THE WITNESS: That there was orders given after that
11 and the final order was given at 2301.

12 THE COURT: All right. Please proceed.

13 Q (By Mr. Rothert) And what was the basis for dispersal at
14 that time, at 11:01 p.m.?

15 A That the people were not leaving the area and they were
16 still blocking the streets.

17 Q Okay. So, first of all, your testimony is that they were
18 blocking the streets; is that right?

19 A Correct.

20 Q And by blocking the streets, what do you mean?

21 A Standing in the street, laying in the streets, not
22 allowing traffic through.

23 Q Okay. So traffic was not being allowed through because
24 of people in the streets?

25 A Because of people in the streets, the police department

1 put vehicles to prevent them from being run over, but they
2 were the cause of that. So the streets were blocked by them
3 and not allowing vehicular traffic through.

4 Q Now, streets are regularly blocked by protest activity in
5 the city of St. Louis; correct? That's a regular thing that
6 happens?

7 A On occasion. I mean I wouldn't say regularly. I don't
8 know. I don't go to every one of the protests. I don't know.

9 Q Okay. But you've been to protests that block the street?

10 A Yes. Correct.

11 Q And where people are marching in a street, for instance?

12 A Yes.

13 Q And when does that become illegal?

14 A Actually, it's illegal right away.

15 Q Okay. Who decides that it's illegal?

16 A I believe it's a state statute or the city ordinance
17 violations that indicate that they're in violation of that.

18 Q All right. So who decides when -- when someone's going
19 to be arrested for being in the street if there's a protest
20 that's in the street?

21 A It would be the incident commander.

22 Q Okay. Is it just at their discretion?

23 A As far as I know, yes.

24 Q So you agree there was no destruction of property
25 happening when Mr. Rossomanno gave his last announcement? No

1 matter what time it was, you agree that there was no
2 destruction of property occurring at that time?

3 A I can't say that, no, sir.

4 Q Well, you're aware of none?

5 A That's correct.

6 Q And your understanding -- well, let's move on from there.
7 How much time passed from when the final announcement was made
8 until people were locked in by the four lines of police lines?

9 A Nineteen minutes approximately.

10 Q So you know that people came into that area after -- came
11 into the area that was blocked off after the last announcement
12 had been made; right?

13 A I do not know that, no.

14 Q Well, were you looking to see if that happened?

15 A I was not in a position to do that. No.

16 Q Was there any step taken to make sure that no one entered
17 the zone after the announcement was made?

18 A Officers were not allowed to let anyone pass from behind
19 them.

20 Q Okay. But they weren't blocking the streets? Before
21 they blocked the streets, before they went in place, how long
22 was it before they were in place?

23 A Okay. I had different lines in place at different -- you
24 have to help me here.

25 Q Okay. So it was possible for people to enter into the

1 area after the last dispersal order and be locked in; isn't
2 that true?

3 A I would -- I would say yes because there was still egress
4 allowed. So I guess they were allowed ingress. We weren't
5 controlling egress or ingress at the time.

6 THE COURT: So when did you actually start
7 controlling it from different directions? You said earlier
8 that to the east you had the bicycle people there.

9 THE WITNESS: Right. Yes, ma'am.

10 THE COURT: So when were they not letting anybody go
11 east? What time?

12 THE WITNESS: Oh, that was well before 11:00 where
13 they couldn't go east.

14 THE COURT: When did they stop letting people go
15 north?

16 THE WITNESS: That was approximately -- north and
17 south was approximately quarter after. And the egress to east
18 and west or egress west was still open until about 20 after,
19 and --

20 THE COURT: And do you have records that show this,
21 where you're getting these precise numbers, or is it your
22 memory?

23 THE WITNESS: It's my memory based on the radio
24 transmissions, Judge.

25 THE COURT: Okay.

1 THE WITNESS: The radio transmissions are
2 timestamped, and based on that, that's how I was coming up
3 with the times for you.

4 THE COURT: Okay. So if I understand what you said,
5 so they couldn't go east after 11:00, but up until 11:15, they
6 could have gone north and south?

7 THE WITNESS: That's correct or west on Washington.

8 THE COURT: Or west?

9 THE WITNESS: Yes, ma'am.

10 THE COURT: And then it was only at 11:20 when they
11 couldn't go anywhere?

12 THE WITNESS: Yes, ma'am.

13 THE COURT: And the last order was 11:01?

14 THE WITNESS: That's correct.

15 THE COURT: Okay.

16 Q (By Mr. Rothert) So you knew you were arresting, causing
17 the arrest of people who had committed no crime; correct?

18 A No.

19 Q When Central Patrol pushed -- pushed the crowd, people
20 off St. Charles -- you testified about that; do you remember?

21 A I do.

22 Q Where were they pushed to?

23 A I observed nobody come off of St. Charles Avenue.

24 Q Oh, so when you said they cleared St. Charles, they
25 cleared nothing or they just made sure no one was there?

1 A Made sure no one was there. They were trying to, but I
2 didn't see anyone come off of St. Charles Avenue.

3 Q You testified that you'd "left an egress as long as we
4 could." Why did -- at what point did you decide to cut off an
5 egress?

6 A Whenever the team made it up there and they were actually
7 in place. It was not my idea, okay, at this particular minute
8 of the day we would stop the egress. It's when the team
9 actually got there and got into place, moved up, and were able
10 to establish their line.

11 Q Okay. And why did you choose to cut off egress after
12 that?

13 A Well, of the people that were not leaving the area, and
14 they were going to be arrested.

15 Q Well, I'm asking why didn't you -- once you have everyone
16 blocked in, why didn't you let people leave?

17 A Because they're under arrest. We're not going to chase
18 people around. Once we've determined that these were the
19 people that were going to be detained and taken into custody,
20 we're not going to allow people to escape or leave.

21 Q Well, all right. Then why did you decide that at that
22 time that would be the time at which you would arrest everyone
23 and not allow anyone else egress?

24 A Once again, that was the time that I finally was able to
25 get a team in place after we had cleared the other areas.

1 Q Okay. But you could have -- you could have said, "Okay.
2 Now we're here. We're on all four sides. You're ordered to
3 disperse. If you don't want to be arrested, disperse." You
4 could have done that?

5 A No. We were -- at that time, the people were going to be
6 detained and taken into custody.

7 Q Okay. I understand that you decided that.

8 A Correct.

9 Q But you could have decided not to take them into custody
10 and to give people a chance to leave; correct?

11 A They'd had a chance to leave all evening.

12 Q So when do you think people should have left?

13 A My opinion is when they got the first dispersal order.

14 Q And when was that?

15 A I don't know when each one of them received that.

16 Q Just the first one.

17 A I don't know. I couldn't give you an exact time.

18 THE COURT: Well, you testified there was one at
19 8:30.

20 THE WITNESS: Yes, ma'am.

21 THE COURT: So you're saying everybody should have
22 left the entire downtown area at 8:30 or otherwise they were
23 subject to arrest? I mean there has to be some line. We're
24 just trying to find out what it is.

25 THE WITNESS: Yeah. No. I understand, Judge. No.

1 At that time, the groups that were there, you know, they were
2 being asked to leave about 8:30 because of all the damage. I
3 would have preferred they left then, but they obviously
4 didn't.

5 THE COURT: But as far as you're concerned, you could
6 have arrested everybody there who had just moved to a
7 different place in downtown because what you told them was get
8 completely out of downtown or get completely out of the city?
9 Again, I'm trying to understand these limits.

10 THE WITNESS: And there was nothing that says, hey,
11 move to this block or move six blocks away. It was just leave
12 the area. So had they left the area, we wouldn't have had any
13 interaction with them is what I'm trying to explain to you.

14 THE COURT: Okay. So if they left the area and moved
15 to Washington and Tucker, you wouldn't have arrested them for
16 disobeying the 8:30 order? Or would you?

17 THE WITNESS: Again, they -- it depends on what --
18 they were congregating up there. They've only moved three or
19 four blocks. They haven't left the area, per se, as far as I
20 was concerned. We still have concerns about people filtering
21 back into downtown and causing more damage or anything else
22 happening.

23 THE COURT: But you didn't arrest them for three
24 hours.

25 THE WITNESS: That group, no, ma'am, we did not.

1 THE COURT: But you're -- what you're saying is you
2 could have because you told them to leave the area --

3 THE WITNESS: Yes, ma'am.

4 THE COURT: -- and three blocks is not enough?

5 THE WITNESS: That's correct. Yes, ma'am.

6 THE COURT: Okay. So what if they had gone two more
7 blocks? Would that have been enough?

8 THE WITNESS: I don't -- I couldn't give you what is
9 enough. I don't know. If there is no longer problems,
10 they're not congregating, they're not doing things that would
11 lead us to believe that there could be more damage or other
12 incidents happening, but I don't have a script. I couldn't
13 tell you exactly how far would be enough. No, ma'am.

14 THE COURT: Okay. Thank you. Sorry.

15 Q (By Mr. Rothert) How is a person on the street supposed
16 to know how far is enough if you don't know?

17 A I don't know.

18 Q And when you're -- when someone's ordered to disperse,
19 how long until they can come back?

20 A Again, I have no script. I don't know what that would
21 mean.

22 Q So when you're enforcing a dispersal order, you know, you
23 feel like you can enforce that hours later?

24 A Depending, again, on the group involved, what they're
25 doing, you know, their actions, the area they're in.

1 Q Now, an unlawful assembly in the city of St. Louis and in
2 the state of Missouri -- you would agree that that requires a
3 crime of violence or force to be happening; right?

4 A No. Criminal activity.

5 Q Just any kind of criminal activity is your understanding?

6 A Yes.

7 Q And is that how -- it's the policy of the St. Louis
8 Metropolitan Police Department to enforce unlawful assemblies
9 if there's any criminal activity?

10 MR. RELYS: Objection. Foundation.

11 THE COURT: Overruled.

12 Q (By Mr. Rothert) Or the custom?

13 A Could you ask again please, if you don't mind?

14 Q Is it the custom or policy of the St. Louis Metropolitan
15 Police Department to declare an unlawful assembly and order a
16 dispersal if there's any criminal activity at all, even
17 nonviolent?

18 A It depends on what the activity is. If it's just
19 blocking a street, if they're blocking a street like I, you
20 know, explained earlier in front of a hospital or a fire
21 department or anything like that, yes. It all depends on the
22 activity that's involved.

23 Q Okay. If there's any criminal activity, a police officer
24 has discretion to declare an unlawful assembly and order a
25 dispersal?

1 A Yes. Now, again, they have to be able to articulate
2 their reasoning behind it, but yes.

3 Q You indicated that one reason why increased force might
4 be used is belligerence by an arrestee or -- do you remember
5 saying that?

6 A Noncompliance.

7 Q You used the word "belligerence," though, didn't you?

8 A I would have to have it read back if I did. Yeah, I used
9 that word, but it's more noncompliance than it is -- I can be
10 belligerent to you, but if I'm still, again, doing what I'm
11 asked to do, I can be belligerent and it's not an issue. It's
12 noncompliance is where we come into problems.

13 Q You testified about the policy that was put in place
14 after the *Templeton* case; correct? You understand which
15 policy I'm talking about?

16 A Refresh again for me which one you're talking about.

17 Q It is Exhibit --

18 THE COURT: Are you talking about recording? Give
19 him a --

20 MR. ROTHERT: No.

21 THE COURT: -- topic or something else.

22 MR. ROTHERT: The use of chemical munitions for --

23 THE COURT: Ah, chemical munitions.

24 MR. ROTHERT: -- dispersal purposes.

25 THE WITNESS: Okay.

1 Q (By Mr. Rothert) Does that apply to the use of inert
2 smoke?

3 A Yes.

4 Q Okay. Pepper spray?

5 A Which type of pepper spray?

6 Q Well, what types of pepper spray are there?

7 A There are the officer-assigned; it's a stream pepper
8 spray. And then there's a chemical or not a chemical but the
9 OC fogger.

10 Q Is the actual liquid -- or is it liquid -- pepper spray?

11 A Yes. Yes, it is.

12 Q Okay. Is the liquid the same in both of those devices?

13 A Yes, they are.

14 Q Okay. So I'll ask you about both devices then.

15 A Okay.

16 Q What about the fogger? Is that covered?

17 A Yes. There's a line in there about the fogger. Yes.

18 Q Okay. And how -- how else might there be pepper spray?

19 A The individual officer has the ability to deploy pepper
20 spray on individuals they come into contact with.

21 Q Okay. Are they allowed to use that to disperse crowds?

22 A In exigent circumstances, sure.

23 Q In non-exigent circumstances?

24 A I don't know that that would be feasible.

25 Q Just asking if it's allowed under the policy.

1 A There's no restriction for it.

2 Q Is OC spray covered under the policy for chemicals used
3 for dispersal?

4 A Which OC spray?

5 Q Okay. Well, tell me what kinds there are.

6 A The fogger and the personal.

7 Q If you could, how about the fogger?

8 A Yes.

9 Q Personal?

10 A No, that's not addressed in the chemical munitions.

11 Q And what about mace?

12 A That's the same thing.

13 Q Same thing as what?

14 A The personal spray.

15 Q Personal OC spray?

16 A Well, actually, mace is a generic term that can be used
17 for either of them.

18 Q Okay.

19 THE COURT: And that's all the same? That's also
20 pepper spray; right?

21 THE WITNESS: Yes, ma'am. It's all --

22 THE COURT: It's all the same thing?

23 THE WITNESS: Yes.

24 THE COURT: There's only one thing?

25 THE WITNESS: Yes, ma'am, it is.

1 THE COURT: Yeah. Okay.

2 THE WITNESS: It's just the method of how it's
3 dispersed.

4 Q (By Mr. Rothert) And what about PepperBalls?

5 A Okay. That is -- has liquid inside of the ball that's
6 actually deployed from an air gun.

7 Q Okay. Is it the same liquid that's in --

8 A Yes, it is. Yep.

9 Q Okay. And is that covered by the policy on the use of
10 chemical agents for dispersal?

11 A Yes. Chemical munitions, it is.

12 Q And do you have -- can you explain why the same chemicals
13 are or are not included under the policy based on their method
14 of delivery?

15 If you know.

16 A I'm trying to -- I'm trying to understand what you're
17 talking about "their method of delivery."

18 Q Well --

19 A Help me here.

20 Q Okay. If it's a personal OC spray of an officer --

21 A Okay.

22 Q -- it's not covered by the policy; is that right?

23 A The chemical munitions policy, correct.

24 Q Okay. If it's a fogger OC spray, it is covered by the
25 chemical munitions policy; correct?

1 A Yes.

2 Q So why is one included and not the other, if you know?

3 A I don't know the reasoning behind it or who wrote that,
4 but it's the same -- it's the same elements, the same liquid
5 in both of them.

6 Q Now, how many of the I/LEADS reports for the use of
7 pepper mace that have been completed since September 15th have
8 you reviewed?

9 A I've reviewed personally three.

10 Q Okay. And what is an I/LEADS report?

11 A It's an incident report.

12 Q Okay. And how many -- do you know how many have been
13 completed regarding the use of mace since September 15th in
14 the city?

15 A No, sir, I do not.

16 Q Okay. But you've only seen three?

17 A I've reviewed three of them. Yes, sir.

18 Q And those have to be completed every time mace is used
19 against a person; correct?

20 A Yes.

21 Q And are they completed every time mace is used against a
22 person?

23 A As far as I know, yes, sir.

24 Q All right. How many -- you were in charge September 15th
25 downtown? You were one of the people in charge; right?

1 A Of the tactical unit, but yes.

2 Q All right. And you know that pepper spray, pepper mace
3 was used against people downtown on the 15th?

4 A Yes.

5 Q Do you have any idea how many people it was used against?

6 A I do not. No, I do not.

7 Q But more than 10; right?

8 A I just explained I don't know how many.

9 Q You don't have -- and how many reports, I/LEADS reports
10 from the use of pepper spray that day have you reviewed?

11 A Just one. But there's a caveat to that. Individual
12 usages can be covered in one incident report.

13 Q Okay.

14 A So it doesn't have to be one report for each individual
15 involved.

16 Q All right. So the one you reviewed -- how many
17 individuals did that involve?

18 A I don't recall.

19 Q And the other two you used or you reviewed -- what were
20 they? What incidents were they from?

21 A The -- it would have been the incident at what we called
22 Waterman and Lake.

23 Q Okay.

24 A And then the arrest incident.

25 Q On the 17th?

1 A At, yeah, Washington and Tucker.

2 Q The arrest incident at Washington and Tucker, that

3 I/LEADS report for the use of pepper spray -- how many people
4 did that indicate pepper spray had been used against?

5 A I don't know, sir.

6 Q But you reviewed that report?

7 A I did.

8 Q And do you remember if it was one or more than one?

9 A I can tell you there was more than one.

10 Q All right. Now, after the four lines were, on the 17th,
11 at the four corners around Washington and Tucker, what were
12 people ordered to do -- the people being arrested?

13 A To lay on the ground, put their hands behind their backs.

14 Q Now, there were also orders to sit down; correct?

15 A I didn't hear those.

16 Q Okay. So if you testified earlier that there were orders
17 to sit down, were you mistaken or --

18 A Let me back up. They were ordered to sit down and then
19 lay down.

20 Q Okay. Now, when you were testifying, at first, you
21 indicated two people were not complying, two people were
22 standing up. Is that -- is that right? Is that accurate?

23 A That was the incident I saw where there were -- there was
24 a fogger deployed.

25 Q Later, you testified that several people were not

1 complying. Is that different from the two people that were
2 standing up?

3 A I don't know if those two people were involved in that,
4 but that's the information that I had received.

5 Q You have no personal knowledge of people not complying?

6 A That'd be accurate, yes.

7 Q And you understand that police officers used excessive
8 force that night on people who were caught in those four
9 lines?

10 A Absolutely not.

11 Q None?

12 A No, sir. I would have had to take action if I seen any
13 excessive force. I didn't see anything like that.

14 Q Did you later learn of excessive force?

15 A Absolutely not.

16 Q So you've taken no action?

17 A What type of action?

18 Q Well, I mean, you said you'd have to take action if you
19 saw excessive force. You haven't done anything about
20 excessive use of force by police officers?

21 A You're correct.

22 Q All right.

23 A In this incident, you're correct.

24 Q All right. Why did Luther Hall have to go to the
25 hospital?

1 A I don't know.

2 Q Do you know who Luther Hall is?

3 A He's a detective with the police department. Yes.

4 Q And isn't it true that he was undercover that evening,
5 September 17th?

6 A I don't know that.

7 Q Okay. And isn't it true that he was caught in the four
8 lines with other -- with other individuals?

9 A Again, I don't know that, no, sir.

10 Q And isn't it true that he was severely beaten by a police
11 officer?

12 A I don't know that either.

13 Q Is it funny if he was?

14 A I thought the way you presented it was, yes. It was very
15 comical.

16 Q Okay.

17 THE COURT: And you haven't read in the paper that
18 that happened? You said you read in the paper they called it
19 kettling.

20 THE WITNESS: Yes, ma'am, but I don't know why Luther
21 went to the hospital. I don't know what happened to him at
22 all, and I haven't made any inquiries.

23 Q (By Mr. Rothert) Well, why haven't you made an inquiry?

24 A The man doesn't work for me.

25 Q Well, does it upset you at all that under something you

1 were overseeing a police officer was sent to the hospital?

2 A Again, I wasn't even aware of that, but afterwards, you
3 know, I became aware that he had, but, no, I would have no
4 reason to make an inquiry.

5 Q Why not?

6 A The man doesn't work for me.

7 Q Okay. The allegation is that he was beat up by people
8 under your command; right?

9 A Again, I'm not aware of that. I'm not even aware there's
10 an allegation.

11 Q So you've never heard of that?

12 This is news to you?

13 A That there's an allegation? You're correct.

14 Q Now, it's quite common for people who have been sprayed
15 with pepper spray to have breathing difficulties; right?

16 A Yes.

17 Q And people were having breathing difficulties on the 15th
18 in the downtown area after they'd been sprayed with pepper
19 spray; correct? You saw that?

20 A I did not.

21 Q On the evening of the 17th, after the people were
22 arrested in the four lines and had been sprayed with pepper
23 spray, you saw people having difficulty breathing because of
24 the pepper spray; right?

25 A I did not.

1 Q What would you have done if you had seen people having
2 difficulty breathing because of the pepper spray?

3 A You remove them from the area, and you allow them to have
4 fresh air.

5 Q Anything else?

6 A Not at that time, no.

7 Q You wouldn't call EMS immediately?

8 A No.

9 Q It is the policy -- in the use of pepper mace, it is the
10 police department's policy, is it not, that EMS should be
11 called immediately for medical assistance if an individual
12 exposed to pepper mace exhibits breathing difficulties?

13 A If they exhibit continued breathing difficulties, yes.

14 Q Continued? Okay.

15 A That's -- yeah. Just because you're experiencing it
16 right off the -- right away, once you're taken to an area,
17 like it explains above that, and given fresh air and allowed
18 to get away from the mace itself, that should alleviate it.
19 If they have continued breathing difficulties after they've
20 been allowed to do that, then, yes, we would contact EMS.

21 Q And does the policy -- does it say "continued," or does
22 it just say "breathing difficulties"?

23 A I couldn't quote the policy.

24 Q But the way it's enforced, it has to be continuing
25 difficulties?

1 A It would be after that, the first step in the remedy to
2 alleviate any effects, yes.

3 Q All right. And that first step -- that goes for everyone
4 who's sprayed with pepper spray; right? Not just people who
5 are having difficulty breathing? Everyone's supposed to be
6 taken somewhere where they can wash off?

7 A No. Only if you're exhibiting any type of issues.

8 Q So isn't it true that the policy of the St. Louis
9 Metropolitan Police Department is that an individual exposed
10 to pepper mace will be treated for an exposure as soon as he
11 or she becomes manageable according to the following
12 procedures? The exposed individual should be taken to a
13 secure location and permitted to thoroughly wash his or her
14 face and eyes with cold water for several minutes to
15 neutralize the effects of the pepper mace.

16 A If they're exhibiting --

17 Q Is that the policy?

18 A If they are exhibiting difficulties, yes.

19 Q Oh, okay. But the policy doesn't say "if they're
20 exhibiting difficulties"; it says anyone exposed; right?

21 A Again, that's somewhat arbitrary. I wouldn't take
22 someone who's not asking for it and make them put their face
23 in cold water or anything.

24 Q What about people who were asking for it on the night of
25 the 17th? Did you see any people asking for it?

1 A I did not, no.

2 Q The *Templeton* agreement that you referenced -- I know
3 you're not the most familiar with it, but is it your
4 understanding that it expires at some point, or do you know?

5 A Oh, I don't know.

6 MR. ROTHERT: I have no further questions.

7 THE COURT: Redirect.

8 REDIRECT EXAMINATION

9 BY MR. RELYS:

10 Q Lieutenant, you were asked a few questions about the
11 incident in which -- around 8:00 or 9:00, on Tucker, on
12 September 17th, where you were marching with the Highway
13 Patrol.

14 A Yes, sir.

15 Q Do you recall that? And you were talking a little bit or
16 you were asked a couple of questions about sort of the grounds
17 for the decision to order that particular group to disperse
18 and use chemical munitions.

19 A Yes, sir.

20 Q Okay. And it was suggested to you on cross-examination
21 that you made the decision to or the decision was made to
22 authorize the use of chemical munitions based on what those
23 people were wearing.

24 A Not just what they were wearing. That was what I was
25 trying to articulate. It was based on their actions, the

1 direction they were coming from, their refusal to comply with
2 our direction, some of the gestures that they were making, the
3 overt "We're not going to comply with this."

4 Q Okay. And when you say the direction they were coming
5 from, they were coming from --

6 A They were coming east.

7 Q From the east to the west?

8 A Correct.

9 Q And you're not saying that -- you're not saying that
10 everyone wearing a backpack gets chemical munitions; right?

11 A No, sir, not at all.

12 Q And you're not saying that everyone who's traveling from
13 east to west gets chemical munitions, are you?

14 A That's correct.

15 Q Okay. What was it about the fact that they were coming
16 from east to west in this particular instance that made
17 that -- that -- that that factored into your decision?

18 A They were coming from the direction where there was
19 already criminal activity. And that they were wearing or they
20 had stopped and were putting on some, you know, equipment or
21 clothing that would prevent anything from affecting them. And
22 they were moving from, again, the east where all this was to
23 the west and then stopped and then would not disperse when we
24 asked them to and then went forward.

25 Q Okay. You were asked a couple of questions also about --

1 about when it's appropriate for -- or who has authority and
2 when it's appropriate to declare an assembly unlawful;
3 correct?

4 A Yes.

5 Q Do you remember that? And you said officers, any officer
6 has the discretion.

7 A Yes, sir.

8 Q In your experience, is it common for an officer, a
9 regular patrol officer, to declare an assembly unlawful?

10 A I've never known that to happen, no, sir.

11 Q But it's possible?

12 A It's possible, yes, sir.

13 Q And must there be some type of unlawful activity to
14 declare an assembly unlawful?

15 A Yes.

16 Q It's not just the whim of a patrol officer, let's say?

17 A No, it's not.

18 Q Okay. And is there a difference between an unlawful
19 assembly of people, in your mind, and a crowd where
20 identifiable individuals are behaving unlawfully?

21 A Yes.

22 Q Okay. Tell us what the difference is in your mind.

23 A Again, an assembly of people is just they're assembling
24 for a purpose or a reason. You know, when we can articulate
25 individuals that have been involved in criminal activity, then

1 these are the people that we would like to take into custody.

2 Q But if it's an entire --

3 THE COURT: Okay. Well, here's -- his question was,
4 "Is there a difference between an unlawful assembly of people,
5 in your mind, and a crowd where identifiable individuals are
6 behaving unlawfully?" And you said, "Yes." And so what's the
7 difference between an unlawful assembly and a crowd where
8 there are identifiable individuals behaving unlawfully?

9 THE WITNESS: Okay.

10 THE COURT: Are you saying those are two different
11 things?

12 THE WITNESS: Yes, ma'am. Yeah. Because you can
13 have a group of people that, you know, it's not an assembly of
14 people, but there are individuals that could be, you know,
15 involved in criminal activity is what I'm getting at, you
16 know, that may not be part of that group, but there -- I think
17 there is a distinction between the two.

18 Q (By Mr. Relys) I guess what I'm asking you is does the
19 crowd have to sort of be acting in some type of concert, in
20 your mind, before an assembly could be declared unlawful?

21 A Yes.

22 Q Okay. It's not enough for just one or two people to --
23 identifiable individuals -- to be able to -- acting unlawfully
24 before the entire crowd is declared --

25 A No, that's -- yes, that's -- yeah, that's correct.

1 Q And when you talk about officer discretion, you would
2 expect officers, whoever they are who would be declaring
3 assemblies to be unlawful, to come at it with that sort of
4 mindset or to use that -- that framework?

5 A Yes.

6 Q Okay. Talked a little bit about the -- you were asked
7 some questions about the dispersal orders and -- and what
8 that -- what dispersal orders might mean or how people on the
9 street were supposed to know where to go if you're -- if
10 you're telling them to leave an area. Do you remember those
11 questions?

12 A I do.

13 Q So you ask somebody to leave the area, and you don't
14 say -- you don't define the area; right?

15 A Correct.

16 Q You're also asking them to disperse, are you not?

17 A Yes.

18 Q So you're not asking them to congregate in a new
19 location?

20 A No, we're not asking them just to move a location or
21 anything like that. We would like them to leave each other,
22 leave the area, disperse the crowd.

23 Q And do you feel like there's any way that would -- that
24 would allow you to easily define how to say to leave the area
25 without saying just "Leave the area"?

1 A I don't know of any, no, sir.

2 Q But it certainly doesn't mean recongregate in a new spot?

3 A No.

4 Q And -- and to the extent you're suggesting or to the
5 extent you'd say, "Go east on Washington," let's say, "and two
6 blocks," that would potentially be problematic because then
7 people would just recongregate two blocks away?

8 A That's correct.

9 Q Okay. And in your experience, when crowds of folks who
10 hear these dispersal orders -- do some of them comply?

11 A Absolutely.

12 Q And how do you know -- how do you know when you've
13 witnessed compliance?

14 A You can actually see people leaving, and you don't see
15 them coming back. You know, at times, I've actually seen them
16 getting into their vehicles and driving away. I saw two folks
17 do that.

18 Q And do you see -- do you see -- do you see sometimes
19 people who move in the direction they're told that do not
20 disperse?

21 A Yes.

22 Q And even though they've moved in the direction that
23 they've been told, do you consider that to be compliance?

24 A No, I do not.

25 Q Why not?

100
1 A They're -- we're giving them a direction, but they're not
2 dispersing. They're not leaving. They're not moving away
3 from the activity they were involved in. They're just
4 relocating.

5 Q And recongregating?

6 A Yes.

7 Q I mean, is the issue -- is -- is -- is the thing that
8 you're trying to get at as a police officer when you're giving
9 an order to disperse -- is the end result, the goal that
10 you're looking for, to effect dispersal within a certain
11 number of blocks or a certain radius? Is that what you're
12 looking for?

13 A Not just, "Okay. Go to the end of this block and stay
14 there." We would like to see folks go about their normal
15 business. And, you know, we're trying to regain, I guess,
16 order of what was going on and regain some type of -- not so
17 much control but order in the area.

18 Q You want people to disengage from the assembly?

19 A Correct.

20 Q We talked a little bit about the policy and what is --
21 what sort of munitions are -- what type of chemicals and such
22 are or are not covered under the dispersal policy.

23 A Yes, sir.

24 Q And I think you testified based on the policy that pepper
25 foggers are -- are covered under the policy but handheld spray

1 cans are not?

101

2 A Yes.

3 Q Okay.

4 A Yeah.

5 Q And that's written in the policy?

6 A Yes.

7 Q In your experience, is it common for either foggers or
8 pepper spray, handheld, to be used to disperse crowds?

9 A It's mostly the foggers. The individual is just a stream
10 when it comes out, and it's a very small can. It's
11 ineffective on very large crowds.

12 Q For what reason?

13 A There's not that much of it, and it's -- again, it's a
14 stream, and it doesn't affect but one person at a time. You
15 have to be very accurate in deploying it. Where with a
16 fogger, you can deploy it into a general area, and it will
17 affect more than one person.

18 Q Okay.

19 A And, again, there's a lot more of it in a can.

20 Q And that policy, the Section XIII of Special Order 1. or
21 1-1, I think it is --

22 A Yes, sir.

23 Q Is that right?

24 A Yeah. 1-01 covers that, yes, sir.

25 Q That's right. That's -- that's an order that pertains to

1 the dispersal of crowds?

2 A Yes.

3 Q It's not -- it doesn't apply in situations where mace,
4 let's say, is used to gain compliance?

5 A That's correct.

6 THE COURT: I need to ask you this question, though.

7 THE WITNESS: Yes, ma'am.

8 THE COURT: You did say it could be used for
9 dispersal earlier.

10 THE WITNESS: It can be, yes, ma'am.

11 THE COURT: And so under the policies, it's
12 appropriate to use mace -- if, for instance, you're telling
13 people to leave the area and someone doesn't, you can spray
14 them with mace to make them leave? It's not just to arrest
15 them and comply with orders to arrest? It's okay to use it
16 just to spray them in the face and say -- or spray them any
17 way and say, "You need to leave"?

18 THE WITNESS: To try to gain compliance, yes, ma'am.

19 THE COURT: And that's to gain compliance?

20 THE WITNESS: Yes.

21 THE COURT: And is that considered a use of force?

22 THE WITNESS: Yes, it would be.

23 THE COURT: And so it doesn't have to be to arrest
24 someone? A use of force can be anytime you want them to
25 follow your orders?

1 THE WITNESS: No. When there is a use of force, we
2 attempt to make an arrest.

3 THE COURT: Okay. Well, what if you just want people
4 to leave the area? You just said you could spray them with
5 the handheld mace to make them leave and not to arrest them.
6 Is that under the policy appropriate? I think you just told
7 me it was.

8 THE WITNESS: All right. Let me back up. Because,
9 again, once you deploy the mace, that's a use of force, okay,
10 and we would want to use that, again, to effect an arrest, but
11 as far as a dispersal, again, it's kind of apples and oranges.
12 For a dispersal type incident, we're just trying to disperse
13 the crowd, but an individual mace can be used on both
14 sides.

15 THE COURT: So you could use the individual mace in a
16 dispersal situation?

17 THE WITNESS: Yes, ma'am. It's just not that
18 effective, but yes.

19 THE COURT: And under your -- and under your
20 policies, you wouldn't have to give any warning for that?

21 THE WITNESS: That's correct. Yes, ma'am.

22 Q (By Mr. Relys) Are you aware of any situation in which
23 handheld mace cans have been used for the specific purpose of
24 dispersing crowds?

25 A I am not, no.

1 Q Okay. Any of the incidents that we've talked about the
2 last two days, did that happen --

3 A Not that I know of.

4 Q -- to your knowledge?

5 A No, not that I know of, no, sir.

6 Q And --

7 THE COURT: So let me ask you this. On the 15th, the
8 incidents where you reviewed these reports, you said there
9 were -- you reviewed one on the 15th, and then you said you
10 reviewed one on the Waterman and Lake, but on the 15th, is
11 that one -- was that in the downtown area you reviewed a
12 report --

13 THE WITNESS: Yes.

14 THE COURT: -- about the use?

15 THE WITNESS: Yeah.

16 THE COURT: And was that to arrest someone?

17 THE WITNESS: There were arrests effected, yes,
18 ma'am.

19 THE COURT: And that's the report you were reading?

20 THE WITNESS: Yes.

21 THE COURT: It wasn't a report about "We used this to
22 get people to move out of the way"?

23 THE WITNESS: It was all-encompassing. There were --
24 there was -- you know, the pepper mace was used, and there
25 were arrests made, but there were also where it was used and

1 the crowd just dispersed and there were not arrests.

2 THE COURT: Okay.

3 THE WITNESS: But it was for that incident.

4 THE COURT: Okay.

5 THE WITNESS: But, again, there were several
6 different individuals involved in just the one incident
7 report.

8 THE COURT: And in that report, there were no
9 warnings about the -- that chem -- that the pepper mace was
10 going to be used?

11 THE WITNESS: That's correct. Yes, ma'am.

12 THE COURT: Okay.

13 Q (By Mr. Relys) You were just asked some questions just
14 now about -- or I think you gave some testimony -- one or the
15 other -- about the use of mace and effecting arrests. Is the
16 decision to use mace contingent upon or do you have -- before
17 someone can use mace as an officer must it also be -- that
18 person be within their authority to arrest somebody?

19 A A lawful arrest, yes.

20 Q So it would be the same sort of probable cause would be
21 required prior to the use of pepper spray?

22 A Yes.

23 Q Now, is every time pepper spray used, are arrests always
24 made?

25 A No, unfortunately not.

1 Q Why?

2 A People --

3 Q I mean maybe there's many reasons, but can you give me
4 some?

5 A People get away, okay, or -- you know, most of the time,
6 that's what it is, is, you know, if there is mace used and
7 people are not -- we're not able to actually put hands on
8 them. They flee or -- whatever reasoning -- we're not able to
9 take them into custody at the time, whether it would incite
10 other acts that wouldn't be as advantageous. We rely on, I
11 guess, the fact that these people may come back and make a
12 complaint and we can identify them then as being involved in
13 something. But there are times where people actually do not
14 get, you know, arrested after there is a use.

15 Q And how about in a situation where there's a large crowd
16 of people and mace is being used to -- to -- for crowd
17 compliance purposes? I think we talked a little bit about --
18 you talked about the use of mace during the bus incident?

19 A Yes.

20 Q Okay. Was everybody -- do you know, did everybody in
21 that incident who mace was used against -- do you know -- were
22 they all arrested?

23 A No, they were not.

24 Q Why not?

25 A We couldn't get ahold of them, or it would have created

1 other issues, you know, to where we didn't want to escalate
2 having to go into the crowd and just pull certain people out.
3 Again, we were -- the biggest portion of that was just to get
4 the dispersal, and we used that for a dispersal as opposed to
5 just an arrest.

6 Q Okay. And in the -- I think you just discussed -- I
7 think you used the word "dispersal" in the context of that bus
8 incident.

9 A Yes.

10 Q Is there -- is there an exigent-circumstances exception
11 to the dispersal --

12 A Yes, sir, there --

13 Q -- the warnings needed for dispersal?

14 A Absolutely.

15 Q And to the extent that any sort of handheld mace or other
16 fogger-type OC spray was used during those incidents, would
17 you -- would you -- in your opinion, would that fall under the
18 exigent-circumstances exception?

19 A Yes, sir.

20 MR. ROTHERT: Your Honor, I would object to anything
21 that he doesn't have personal knowledge of.

22 THE COURT: Overruled.

23 A Yes, that would fall into the exigent circumstances.

24 THE COURT: Can you tell me why?

25 THE WITNESS: Due to what the officers are

1 encountering at the time, for their safety or the safety of
2 other people, if they have to use something --

3 THE COURT: Wait. No. You're telling me
4 hypothetically. You just told me in this particular incident
5 it's your testimony under oath that with the bus incident that
6 was exigent circumstances. So tell me from your own personal
7 knowledge why that was exigent circumstances in that
8 particular incident.

9 THE WITNESS: There were people throwing things at
10 the bus, and we could not get the officers off the bus. So we
11 had to force the people away from the bus just to get the
12 officers off for their safety.

13 THE COURT: And so what were the exigent
14 circumstances that meant you didn't -- I mean I think your
15 testimony before was you don't have to give them a warning.

16 THE WITNESS: That -- yeah, for that, for the mace,
17 yeah, you're correct.

18 THE COURT: Okay. And so what did you have to have
19 exigent circumstances to do? To not arrest them or what? Why
20 was exigent circumstances important in that situation?

21 THE WITNESS: For the officers' safety, to get them
22 off of the bus and get the buses moved.

23 THE COURT: Yeah, and so he just asked you is there
24 an exception to the policy for exigent circumstances, and so
25 what I understood that to mean was there are circumstances

1 where you don't have to follow the written policy because
2 there are exigent circumstances.

3 THE WITNESS: Yes, ma'am.

4 THE COURT: So what written policy were you not
5 following because of what you've just described as the written
6 circumstances?

7 THE WITNESS: I believe it would just --

8 THE COURT: Or exigent circumstances? I'm sorry.

9 THE WITNESS: Yeah. It would be the actual -- the
10 munitions policy because the officers were using a fogger.

11 THE COURT: Oh, so you're saying they did not use
12 handheld mace that afternoon?

13 THE WITNESS: I'm sorry. The small ones, no. The
14 fogger is actually handheld.

15 THE COURT: Okay.

16 THE WITNESS: But, yeah, they were using the foggers.

17 THE COURT: They weren't using the small ones?

18 THE WITNESS: I didn't see anybody use the small
19 ones. No, ma'am.

20 THE COURT: Okay. All right. So that's why they
21 didn't have to give a warning?

22 THE WITNESS: Correct.

23 THE COURT: But they normally don't have to give a
24 warning to use the small ones?

25 THE WITNESS: They don't with either of them, no,

1 ma'am.

110

2 THE COURT: But you didn't see anybody that whole day
3 use the small ones?

4 THE WITNESS: No, ma'am, I didn't.

5 THE COURT: Okay.

6 MR. RELYS: Nothing further.

7 THE WITNESS: Thank you.

8 THE COURT: Any redirect? Or did I just do it for
9 you? Sorry. Recross?

10 MR. ROTHERT: No. Thank you.

11 THE COURT: You may step down.

12 THE WITNESS: Thank you.

13 THE COURT: I'm just trying to know what happened --
14 I really am -- and what everybody's positions are.

15 You may call your next witness.

16 MR. MCDONNELL: Your Honor, we're going to call
17 Matthew Karnowski.

18 THE COURT: Okay. Sir, would you step over here to
19 the clerk to be sworn?

20 If you wish to pull that chair over and just pull the
21 mike, you can just bend that mike down. That's fine.

22 MR. MCDONNELL: I will later, Judge, if the knee
23 starts acting up.

24 THE COURT: Okay. Okay.

25 THE WITNESS: Good afternoon, Your Honor.

1 MATTHEW KARNOWSKI,

2 HAVING BEEN FIRST DULY SWORN, WAS EXAMINED AND TESTIFIED AS
3 FOLLOWS:

4 DIRECT EXAMINATION

5 BY MR. MCDONNELL:

6 Q Please state your name again, sir.

7 A Matthew Karnowski.

8 Q Where are you employed?

9 A The St. Louis Metropolitan Police Department.

10 Q Do you have a certain rank?

11 A I am a sergeant.

12 Q And are you assigned to a particular division?

13 A I am detached to the downtown Bike Unit.

14 Q Can you explain what that is?

15 A The downtown Bike Unit is a patrol unit within the Fourth
16 District that primarily focuses on downtown.

17 Q Okay. Let me direct your attention to the weekend of
18 Friday, September 15th, 2017, through Sunday, the 17th. Can
19 you tell the Court how many hours you worked approximately
20 during that time frame?

21 A I worked on Friday approximately 20 hours, and that
22 following Sunday, about 16.

23 Q Okay. And were those in response to activities related
24 to the protests?

25 A Yes.

1 Q Sergeant, I'd like to direct your attention to what we
2 call the bus incident on Tucker and Clark.

3 A Okay.

4 Q Can you tell the Judge what was going on there?

5 A That day, there were protestors situated in and around
6 the intersection of Tucker and Clark and also in front or in
7 between Engine House 2 and the Police Academy. There were
8 some police resources that were staged over at that location,
9 and it came to my attention that protestors had blocked
10 ingress and egress routes of two MetroBuses that contained
11 civilians and police officers.

12 Q Okay. And did a problem develop with the officers on the
13 buses and the protestors?

14 A Yes. The protestors, as I said, blocked -- blocked the
15 ability for the buses to leave the area.

16 Q Okay. What did you do, if anything?

17 A My -- my team that day -- I was -- I was a supervisor of
18 the bicycle response team, and we were given orders to enter
19 that area and bring the buses out.

20 Q Okay. Can you describe for the Court what happened when
21 you attempted to do that?

22 A We formed two -- two columns or two rows of bicycle
23 officers, and when we approached the area the buses were in, a
24 number of protestors formed human chains and attempted to
25 block our access to the buses. We had to drive through those

1 individuals and --

113

2 Q When you say "drive," you mean ride your --

3 A Well, we were walking our bikes at that point.

4 Q Walking your bikes?

5 A So we had to push through, rather, would probably be a
6 better choice of words. And then I eventually made it to the
7 first bus, the bus that was situated further to the north.

8 Q When you got there, what did you see?

9 A I saw a -- several protestors that had formed a human
10 chain in front of the first bus, some of which had their arms
11 interwrapped or intertwined with the bike rack on the front of
12 the bus.

13 Q There's a bike rack on top -- in the front of the
14 Bi-State Bus or the MetroBus?

15 A It's affixed to the front of those buses.

16 Q Okay. And not only were their arms locked together; some
17 of them were actually holding onto that bike rack?

18 A Yes.

19 Q Did you give them any orders, sir?

20 A I ordered the people that, the folks that were wrapped in
21 front of the bus to move away from the bus immediately or they
22 would be maced.

23 Q And just so we're clear for the Court, what -- exactly
24 what was the order you gave to these individuals?

25 A So when we were moving as a group into the area where the

1 buses were, my team was saying in unison, "Move back. Move
2 back." When I got to the bus, I ordered them to move away
3 from the bus.

4 Q While this was going on, were there people throwing
5 anything?

6 A Yes. People were throwing water bottles and other
7 objects at the bike officers from the group of protestors.

8 Q And these water bottles -- were they filled? Were they
9 frozen? How were they?

10 A The ones I observed were filled. I didn't see any frozen
11 ones at that point.

12 Q So you -- after you had told the protestors to move back,
13 did they comply?

14 A Some did.

15 Q Okay. What about the ones that didn't comply?

16 A We -- on the way to the buses, we pushed our bikes
17 through those individuals that did not comply and did not move
18 back.

19 Q What about the group of protestors that were directly in
20 front of the bus, hanging onto the bike rack?

21 A Those particular folks, they did not comply with my
22 order.

23 Q And, again, just so -- I want the Court to be certain.
24 What was your order to them, the ones directly in front of the
25 bus?

1 A To get out of the way of the bus or remove themselves
2 from the front of the bus.

3 Q And did you tell them there would be a consequence if
4 they did not do so?

5 A I told them that they would be maced if they did not.

6 Q Did they comply with your order?

7 A No.

8 Q What action did you take next?

9 A I directed my handheld canister of pepper spray towards
10 the faces of the individuals that were blocking the bus.

11 Q And just so we're clear with the Court, can you describe
12 your handheld pepper spray? Is that something that's hooked
13 onto your utility belt?

14 A Yeah. It's locked up right now, but it's a smaller
15 canister, and it goes into my belt.

16 Q And when you sprayed it, did you direct it at an
17 individual or individuals or --

18 A The individuals that were blocking the bus -- that's who
19 I directed my pepper spray towards.

20 Q And were you successful in striking them with the pepper
21 spray?

22 A Yes.

23 Q Okay. What were their reactions? Did they then comply?

24 A That group of individuals immediately removed themselves
25 from the bus out of -- and they went in different directions.

1 Q And had they initially done that when you gave them the
2 order to move away from the bus, you wouldn't have had a need
3 to use your pepper spray; is that correct?

4 A Correct.

5 Q Did the -- the next day or so, did you see a photo in the
6 newspaper of someone that claimed that they were -- that they
7 had -- were maced --

8 A Yes.

9 Q -- while at the bus incident?

10 A Yes.

11 Q Okay. And did you come to know that was Maleeha Ahmad?

12 A Yes.

13 Q Okay. And she was one in front of the bus?

14 A Yes. She was one of the individuals in front of the bus,
15 wrapped in front of the bus.

16 Q And she was one of them sprayed by you?

17 A Yes.

18 Q And the reason you sprayed her was she didn't comply with
19 your order; correct?

20 A Correct.

21 Q And she was warned that she would be maced; correct?

22 A Yes.

23 Q The entire situation in trying to extract the buses here
24 and the officers -- can you describe that for the Court? Was
25 it chaotic? Was it -- you know, what was your impression?

117
1 A It was very chaotic, and it was very dynamic. There were
2 numerous individuals, as I had mentioned before, that were
3 attempting to prevent me and my team from gaining access to
4 the bus. Objects were being thrown at the bus and us. I was
5 concerned that one of the objects may break a bus window,
6 which would certainly cause injuries. Again, there were
7 civilians on the bus as well. The bus drivers were civilian
8 Metro employees. And, of course, we were being yelled at and
9 screamed at and cussed at at the same time. So a cacophony of
10 things were happening, and it was certainly a difficult
11 situation to be in.

12 Q Any of the participants in the protest pulling on your
13 bicycles?

14 A Yes. While I was addressing the folks in front of the
15 bus, I looked to my right, and I saw that somebody had grabbed
16 ahold of one of my officer's bicycles, and I directed a short
17 burst of pepper spray at that individual to end the assault on
18 that officer.

19 Q Did you see any of your fellow officers actually struck
20 by objects that were thrown?

21 A I had later learned that several officers on my team were
22 struck. Two were punched, and one sustained -- one of the
23 other sergeants was injured by somebody pushing back on his
24 bicycle, back into him.

25 Q Was Lieutenant Boyher who's involved with the bike

1 response team --

118

2 A Yes.

3 Q -- was he struck?

4 A He was struck several times in the head with water
5 bottles and also punched.

6 Q Sergeant, let me -- let me push you ahead a little bit
7 further. On Friday afternoon, was there an incident where
8 people were damaging police SUVs near this area?

9 A Yes.

10 Q Can you tell the Court where this occurred?

11 A A police vehicle, a marked police SUV, was damaged while
12 it was parked at the front of the old headquarters on Clark --
13 excuse me -- on Clark, just west of Tucker, on the south side
14 of the street.

15 Q What was going on with the -- with the SUV or the damage
16 that you saw?

17 A I later learned that the windshield had been damaged and
18 that the vehicle had sustained body damage.

19 Q Did you respond to that scene?

20 A Yeah. We were directed -- the bicycle response team --
21 members of the bicycle response team were directed to respond
22 to the area in order to extract the group of Special
23 Operations detectives that were -- had been sent in to try to
24 get the vehicles in the first place. Apparently, they had
25 become surrounded by protestors. And then also our other

1 objective was to clear the area so we could remove our
2 vehicular assets from that street.

3 Q And when you say "clear the area," Sergeant, what do you
4 mean?

5 A So police vehicles are actively being damaged. We have
6 to make it safe for everybody, including us. So, as I said,
7 our objective was to clear the area of protestors so we were
8 able to safely bring those vehicles out and our people as
9 well.

10 Q And did you give the protestors any type of orders?

11 A So, again, we went back in with a couple of rows of
12 bicycle officers, bicycle response team officers, and as we
13 move into a situation such as that, we use the commands, "Move
14 back" in unison. So, yes, we did.

15 Q And when you gave that command, did some folks comply?

16 A Some folks complied, and some folks actively attempted to
17 block our entry into the area.

18 Q How did this situation finally wind up, resolve itself?

19 A When we finally got into there, I actually ended up
20 losing my canister of mace, and several individuals in the
21 crowd, as I saw it roll on the ground, tried to block me from
22 regaining possession of my piece of equipment. At some point,
23 a subject, who was later arrested, picked up my mace and tried
24 to put it into his pocket, and then individuals attempted to
25 prevent me and my team from trying to apprehend that

1 individual, at which point one of my officers deployed a short
2 round of pepper spray to -- to address those individuals
3 attempting to impede us from arresting the responsible
4 subject.

5 Q And were you able to arrest him at that time? Or no? Or
6 her?

7 A It was a gentleman. I indicated to some other nearby
8 detectives that the gentleman had stolen my mace, and they
9 were able to grab him kind of from behind the crowd and take
10 him into custody.

11 Q So would it be a fair assessment, Sergeant, that between
12 the bus incident and this incident with damaging the police
13 vehicles on Friday afternoon that it was -- that it was a very
14 active and chaotic day for you?

15 A It was, and once -- once the subject who had attempted to
16 take my mace was placed into custody, we started being pelted
17 with pieces of concrete.

18 Q Did you know where that concrete came from? Was it --

19 A From the crowd of protestors. I couldn't -- I couldn't
20 specify who was throwing it or exactly what direction, but in
21 the general direction of the protestors.

22 Q And, Sergeant, jumping back to the bus incident just for
23 a second, were you also concerned about the safety of the
24 protestors being in front and behind the bus?

25 A I was. I think the bus driver had the wherewithal not to

1 run over any protestors, but they certainly placed themselves
2 in a precarious position of blocking egress routes for that
3 bus to travel.

4 Q Sergeant Karnowski, let me direct your attention to later
5 Friday night. Were you out by Barnes Hospital in the Central
6 West End?

7 A Yes.

8 Q Did you have any incidents regarding the protest activity
9 there?

10 A Later that night, we were ordered to respond to the area
11 of the Central West End in order to support the monitoring of
12 the protestors. At some point, they -- a large number of
13 protestors traveled to the intersection of Kingshighway and
14 40. It was our understanding that their intention was to shut
15 down the highway, but we were fortunately able to thwart those
16 efforts at that point. The protestors later traveled to --
17 from my understanding, I later learned -- the Mayor's house,
18 and there was a bit of destruction of property. We weren't
19 necessarily involved with that, but while we were staging at
20 Euclid and Forest Park Parkway --

21 THE COURT: Can you hold on a second? I need to know
22 if you're -- are you talking about when they were trying to
23 block the highway or after the -- somehow at the Mayor's --

24 THE WITNESS: So the --

25 THE COURT: And let me just ask him to give you a --

1 break it up into new questions --

2 MR. MCDONNELL: Sure.

3 THE COURT: -- because I -- I mean you've got several
4 incidents going on here.

5 THE WITNESS: Yes, ma'am. Sorry.

6 THE COURT: Why don't you ask him a fresh question so
7 I'm sure I understand.

8 Q (By Mr. McDonnell) Sergeant, when you're in the Central
9 West End, near Barnes Hospital, do you have an occasion to
10 help arrest someone that lit a dumpster on fire?

11 A Yes.

12 Q Can you explain that to the Judge?

13 A Yes. So as the protests were wrapping up in the Central
14 West End, members of my team were alerted by two undercover
15 St. Louis County officers that two individuals had just lit a
16 fire in a dumpster in an alley near the northwest corner of
17 Euclid and Forest Park Parkway, and those guys, the two
18 suspects responsible, just happened to be walking by our
19 entire bike squad when we were alerted to this information. I
20 assisted some of my officers in taking one guy into custody,
21 and then some of the other bicycle response team members took
22 the other guy into custody, and charges were issued by the
23 Circuit Attorney's Office relative to arson-related issues and
24 resisting arrest.

25 Q Let's jump to Sunday, September 17th.

1 A Yes.

2 Q Okay. Were you in the downtown area that day?

3 A I was.

4 Q Okay. And did you happen to be on Pine Street at a
5 certain time that evening?

6 A Yes.

7 Q Can you tell the Judge what -- around what time you were
8 there?

9 A I think, backing up, there was a number of peaceful
10 protesters that had started -- there was a peaceful protest
11 that started in front of our headquarters, and that group of
12 individuals marched for a while, but once darkness fell, there
13 was a group of about two or three individuals that donned
14 masks and began traveling west on Olive from Police
15 Headquarters. During their travels, they encountered an
16 outdoor stage that was set up in front of the public library,
17 I believe, and the streets had been blocked off. The members
18 of that group destroyed objects within that area, and that
19 group continued west on Olive -- I'm sorry -- east on Olive.

20 THE COURT: Yeah. I'm trying to figure this out.

21 MR. MCDONNELL: East.

22 THE COURT: So from Police Headquarters, they were
23 coming east, not west?

24 THE WITNESS: Yes, ma'am. I'm sorry. My apologies.

25 THE COURT: Okay.

124

1 THE WITNESS: East. Members of the group destroyed a
2 bunch of related materials within that stage area, and members
3 of that group also continued east across Tucker. We were able
4 to make it to 9th, where we struck a line at about the time
5 members of that group were -- were continuing east.

6 Q (By Mr. McDonnell) This was 9th and Olive, sir?

7 A 9th and Olive.

8 Q Okay. And approximately what time in the evening was
9 this?

10 A I can't give you a specific time.

11 Q Dark out?

12 A It was dark.

13 Q Okay. What occurred around 9th and Pine Street or Olive?

14 A As we were traveling north on 9th from Pine, I could hear
15 windows being destroyed and other property being damaged.

16 Q What did you do in response to that?

17 A We -- I had the bike officers strike a line on the south
18 side of Olive Street crossing 9th.

19 Q And what could you observe from that point of view?

20 A I was able to look down the street and to see several
21 windows that had been broken, and then we observed about 150
22 or so folks that were in the group.

23 Q In the what?

24 A In the group.

25 Q Okay. And could you describe for the Court what that

1 group was doing?

2 A They were mainly screaming at us, and as I said, members
3 of that group had already caused a bunch of property damage on
4 Olive, and then once the group approached us, different -- the
5 group kind of fragmented, and then we pushed forward up to the
6 street to the north and struck another line. As we were doing
7 that, we observed further down, towards Washington, people
8 pushing planters over, throwing things at windows again, and
9 then pulling a bunch of material out into the street, like a
10 mattress and, I think, a couch and some other debris, and then
11 they also drug a bunch of, like, signs and grates in the
12 middle of the street.

13 Q Now, it's been suggested earlier that these people were
14 arrested at that time. Is that correct?

15 A I believe there was just a couple of arrests made at that
16 time, but I don't know the specifics of those, and one of my
17 officers was injured, sustained a pretty significant knee
18 injury during the course of those, but that's about the extent
19 I know of those.

20 Q And when you were seeing this damage, I guess, on
21 Washington Avenue at this point in time, did you try and push
22 these protestors to some location?

23 A We pushed them north. We continued to push them north,
24 and then they kind of dispersed for the most part for a little
25 bit, and then it's my -- like maybe a half an hour later,

1 there was a group of protestors that engaged a contingent of
2 the bicycle response team close to Lucas (sic) and Tucker.

3 Q Can you describe what happened there?

4 A Subjects were -- in the crowd were -- were some of the
5 same subjects that were in the crowd that was damaging
6 property beforehand, were screaming at our officers and
7 getting pretty close to our officers. Sergeant Rossomanno, at
8 that time, issued an unlawful assembly, addressed the crowd
9 and told them that they were engaged in an unlawful assembly
10 via his police vehicle.

11 Q Let me stop you there. How did he announce this?

12 A Over his -- the intercom or the speaker on his police
13 car.

14 Q And do you remember the language he used or what --
15 what --

16 A He said it was an unlawful assembly and subjects
17 remaining in the area would be subject to arrest and/or
18 chemical munitions, something along those -- those lines. I
19 don't remember the exact verbiage.

20 Q Okay. And can you give me an estimate of the time of the
21 evening this was?

22 A This was certainly later than the property damage, and I
23 would probably say about 45 minutes after -- after our initial
24 encounter with the protestors at 9th and Olive.

25 Q After Sergeant Rossomanno gave this warning over the PA

1 system of his vehicle, did some of the people comply with
2 that?

3 A At that particular moment, everybody complied and moved
4 onto Tucker, and then many walked northbound towards
5 Washington. A short time later, Sergeant Rossomanno continued
6 to issue unlawful assembly orders over his PA, and Sergeant
7 Jemerson walked down or north on Tucker from Locust, issuing
8 the same thing verbally to individual groups.

9 And I should say, backing up to when we struck a line at
10 9th and Olive and then the next block to the north, I also
11 issued verbal unlawful assembly orders myself.

12 Q And why? What'd you base that on?

13 A Property was actively being damaged, and things were
14 actively being thrown into the street.

15 Q At some point in time, did you see any chemical munitions
16 used?

17 A At -- at -- I'm sorry?

18 Q Sometime after those warnings were given, did you see any
19 chemical munitions used?

20 A Not until the controlled arrests later on that evening
21 began being effected.

22 Q And the controlled arrests were down at Tucker and
23 Washington?

24 A Yes.

25 Q Okay. Where were you stationed at that time?

128

1 A At that time, I was behind a contingent of bicycle
2 response team officers across Washington on the east side of
3 Tucker.

4 Q Okay. Did you hear any warnings given?

5 A Numerous warnings given to protestors that were in and
6 around that intersection to leave the area immediately or they
7 would be subject to arrest and/or chemical munitions.

8 Q Did you see some of the people heed the warning?

9 A Yes. Some people left the area.

10 Q And can you tell us, Sergeant, what areas of egress they
11 have at that point in time? Could they go west on Washington
12 or north on Tucker? Tell the Court please.

13 A At the time my bike line or the bike line -- Sergeant
14 Duke's bike line was struck across Washington on Tucker, all
15 directions other than eastbound were available for folks to
16 travel.

17 Q Okay. So your line, where you struck the line, you
18 weren't letting anybody go eastbound; correct?

19 A Correct, because we didn't -- and the philosophy behind
20 that was we didn't want further property damage to occur
21 behind us.

22 Q And you wouldn't let anybody like coming up behind you
23 through at that point in time; would that be --

24 A Correct.

25 Q -- correct? Okay. And so when you heard these warnings,

1 were they over the PA system?

2 A Yes.

3 Q Okay. Were you -- were you aware of any activity by
4 Sergeant Rossomanno or Sergeant Jemerson regarding them going
5 into the crowd?

6 A As I said earlier, Sergeant Jemerson actually went into
7 the crowd and told individual -- told smaller groups and
8 individuals that the assembly was unlawful and that they had
9 to leave.

10 Q Sergeant, did you observe the arrest teams come in and
11 start arresting the people at Washington and Tucker?

12 A I did.

13 Q Okay. When that occurred, can you tell -- tell us what
14 you saw. Did you see any resisting, noncompliance, anything
15 like that?

16 A There were folks that did not comply. There was -- I --
17 I -- there was a lot of things going on at that point, and
18 there was still nobody behind us. So I'm trying to focus my
19 attention behind us and in front of us and to make sure that
20 our line is solid and secure. I did see several individuals
21 resisting, several -- one kind of comes to mind where there
22 was a guy that would not bring his hands to a handcuffing
23 position, and there were other policeman that were trying to
24 get his arms out, saying that he was armed with knives. So
25 that was a little concerning to me as well.

1 Q Were you aware of any weapons that were recovered from
2 any of the people arrested?

3 A I later learned there were six firearms, approximately
4 six handguns recovered, not only from the ground and they were
5 laying there by themselves but also individuals that were
6 involved in the incident.

7 Q Sergeant, on the evening of Sunday night, in the
8 Washington-Tucker area, did you observe any of the individuals
9 in the crowd of protestors wearing any type of goggles,
10 bandanas, masks, anything like that?

11 A Numerous members of the group of folks that were arrested
12 were wearing goggles, masks, and bandanas over their faces.

13 Q And in your experience as a police sergeant involved in
14 these protests, do you know why they were donning such
15 equipment?

16 A It's my understanding that that equipment is used to
17 attempt to thwart any sort of pepper spray or chemical
18 munitions that may be used.

19 Q Sergeant, I'm going to show you what's been marked
20 Defendant's Exhibit F. It's a declaration which you signed
21 about a week ago. Do you remember seeing that?

22 A I do.

23 Q It's four pages long, and did you sign this?

24 A I did.

25 Q Okay. And is it still true and correct to the best of

1 your ability?

2 A It is.

3 MR. MCDONNELL: Your Honor, move in for evidence
4 Defendant's Exhibit F.

5 THE COURT: Exhibit F is received into evidence.

6 MR. MCDONNELL: No further questions at this time.

7 THE COURT: All right. Cross-examination.

8 CROSS-EXAMINATION

9 BY MR. ROTHERT:

10 Q Good afternoon, Mr. Karnowski.

11 A Good afternoon, sir.

12 Q The damage at the library that you were testifying about
13 on -- was that on Sunday night?

14 A Sunday night, yes.

15 Q The 17th? That didn't make it into your declaration, did
16 it?

17 A No.

18 Q Okay. Was there a reason why you left that out?

19 A Not in particular.

20 Q Now, you understood when these orders to disperse were
21 being given that they were directed at the protestors;
22 correct?

23 A Yes.

24 Q All right. And they were not directed at the media?

25 A They were directed at anybody who was out in the street

1 at the time.

2 Q Okay. They weren't directed at people who were observing
3 the protests, were they?

4 A As I said, those dispersal orders were directed at
5 anybody in the street or on the sidewalks in that particular
6 area at that time.

7 Q But anyone using common sense, if they were just a
8 neighbor walking by, they wouldn't think that applied to them,
9 would they?

10 A I would think -- if it were me and I were hearing issues
11 being or orders being given over a loudspeaker by a police car
12 to leave the area immediately, I would leave.

13 Q Okay. But they were directed to the protestors. You
14 said that several times; correct?

15 A As I said, those orders were issued at anybody in that
16 area at that particular time.

17 Q In your declaration, you say, "The protestors were
18 ordered to disperse." Correct?

19 A Yes.

20 Q All right. Why'd you say, "The protestors were ordered
21 to disperse" if you mean people other than the protestors?

22 MR. MCDONNELL: Judge, I'm going to object.

23 Argumentative.

24 THE COURT: Overruled.

25 A As I -- as I just testified to, those orders were

1 directed to everybody in the crowd.

2 Q (By Mr. Rothert) What's the last -- there was -- there
3 was damage to property, Sunday, the 17th, on Olive; correct?

4 A Yes.

5 Q And around the 900 block --

6 A Yes.

7 Q -- windows were broken?

8 A Uh-huh.

9 Q Where was furniture thrown into the streets?

10 A The next block north of Olive, the block south of
11 Washington.

12 Q Locust?

13 A I'm sorry?

14 Q Would that be Locust?

15 A I think so, yeah.

16 Q And was that also in the 900 block?

17 A No. It was on -- on 9th.

18 Q 9th?

19 A Yes.

20 Q Right at 9th? Okay. Were there -- was there property
21 damaged after those two incidents?

22 A Yes.

23 Q Okay. Where did that happen?

24 A There was property -- there was numerous giant planters
25 that were rolled over and broken on 9th, just south of

1 Washington, and some of those chunks of material broken off
2 from the planters were used to break some windows at the hotel
3 at 9th and Washington.

4 Q What time did that happen?

5 A I can't give you a specific. It was after the property
6 damage at Olive.

7 Q Okay. That also didn't make it into your declaration,
8 did it?

9 A Nope.

10 Q All right. Reason why it's not in your declaration?

11 A No.

12 Q Other than -- and when you say numerous planters, I mean
13 one's a number; a hundred's a number. How many are we talking
14 about?

15 A I would say at least a dozen.

16 Q A dozen. Okay. It seems like that would be a pretty
17 significant event if a dozen cement planters were used. How
18 many windows were broken with that?

19 A I can't say specifically. Two or three over there.

20 Q Okay. What time would that have been?

21 A As I just said, after the property was damaged on Olive.

22 Q Okay. "After" could be midnight, could be 8:31.

23 A Within 15 minutes.

24 Q Within 15 minutes. So after 8:45, are you aware of any
25 violence downtown?

135
1 A I don't recall specifically when the time was the windows
2 were broken on Olive. So I can't testify as to a time when
3 the windows were broken on 9th just south of Washington.

4 Q Okay. But you know that the -- well, in your
5 declaration, you said between 8:00 and 9:00 --

6 A Okay.

7 Q -- was the damage on Olive. Would that be accurate if
8 it's in your declaration?

9 A Sure.

10 Q All right. So -- and so knowing that, can you tell me
11 when the last time you know of violence in downtown was on
12 Sunday, the 17th?

13 A So when the last time I knew -- probably when the
14 protests -- some of the protestors in the group of folks that
15 were being arrested were resisting arrest.

16 Q Okay. Well, that's before the arrest, yes.

17 THE COURT: You said violence. Are you talking about
18 property damage?

19 Q (By Mr. Rothert) Okay. Yes, I'm talking about any
20 property damage or violence prior to the arrests but after
21 9:00.

22 A I'm not aware of any.

23 Q Now, in your declaration, you say a multitude of
24 protestors engaged in criminal conduct. Do you -- do you know
25 how many?

1 A No. More than one.

2 Q More than one?

3 A Yes.

4 Q Okay. More than 10?

5 A That might be fair, yeah, to say.

6 Q It might be fair to say that it's more than 10?

7 A Ten or more.

8 Q Okay. Twenty or more?

9 A I --

10 Q Do you have any idea?

11 A Multiple.

12 Q All right. Now, what's your understanding of -- you --
13 you've determined that assemblies are unlawful sometimes,
14 including on the 17th; correct?

15 A Yes.

16 Q All right. So what's your understanding of when you can
17 decide an assembly is unlawful?

18 A When I gave the unlawful assembly orders earlier that
19 evening off of Olive and 9th, I observed property being
20 damaged and things being thrown into the street.

21 Q Okay. So what's your understanding of when -- what your
22 authority is to determine an assembly is unlawful?

23 A I used a common sense approach to it. Things were being
24 damaged and actively destroyed, and so -- by a group of
25 individuals, so that's why I declared that assembly unlawful.

1 Q Okay. And I understand why -- why you did it on that
2 occasion. I'm just asking more generally what is your
3 authority. When can -- under what circumstances can you
4 determine an assembly is unlawful? What's your understanding
5 of that?

6 MR. MCDONNELL: Your Honor, I make an objection. It
7 calls for a legal conclusion, not relevant to what he did that
8 evening.

9 THE COURT: I'm going to sustain this one. I
10 understand what he says he did.

11 Q (By Mr. Rothert) Did you declare any unlawful assemblies
12 later, other than at 9th and Olive?

13 A Personally, I did not.

14 Q The people who were arrested at 10:40, after being caught
15 in those four lines, they were not engaged in any violent
16 activity prior to being arrested; is that correct?

17 A Some of the folks that were in the group of people that
18 were arrested at Tucker and Washington were in the same group
19 of people that were damaging property at 9th and Olive.

20 Q How do you know that?

21 A Because I recognized some of them from their clothing.

22 Q Now, if you recognized them as people who had damaged
23 property, why didn't you arrest them?

24 A I didn't say that I recognized those particular
25 individuals that damaged the property. I said I recognized

1 individuals that were with the folks that were damaging
2 property.

3 Q Oh, okay. So my question was the people who were
4 arrested at Tucker and Locust and Washington around 10:40 --
5 they were not engaged in any violent activity themselves?

6 A They were when they resisted arrest.

7 Q Okay. Prior to being arrested, they had not engaged in
8 any violent activity; is that right?

9 A As I said, they were with the group that was throwing
10 stuff through windows on Olive.

11 Q Okay. Can you identify anyone that was arrested that was
12 engaged in any violent activity?

13 A I cannot.

14 Q All right. And in fact, in your declaration, what you
15 say they did wrong was physically obstruct the movement of
16 vehicular and pedestrian traffic.

17 A That's one of the things that they were doing, yes.

18 Q Okay. So there were other things, but you just listed
19 the one?

20 A Yes.

21 Q And they weren't really interfering with pedestrian
22 traffic, were they?

23 A There were so many folks that people couldn't possibly
24 walk through.

25 Q No one was having trouble walking through that you saw.

1 Did you?

139

2 A They were blocking --

3 Q I'm just asking if you saw, if you saw people having
4 trouble walking through the crowd.

5 A There were neighborhood residents that were trying to get
6 back to their places, and there were some issues with them
7 getting -- getting through.

8 Q And were those issues caused by police officers? Right?
9 I mean police officers blocking the street stopped
10 neighborhood residents from getting --

11 A I wasn't blocking anybody on the sidewalk until we struck
12 a line at Tucker and Washington.

13 Q Were you then allowing neighborhood residents through?

14 A If somebody lived in the neighborhood, yes, we let them
15 through.

16 Q Going back to Friday, the 15th, at -- at -- we're going
17 to talk about the bus incident. So bus time. Do you know
18 what I'm talking about?

19 A I do.

20 Q All right. Now, in your declaration, you talk about how
21 you maced some folks. Is that -- is that accurate?

22 A Yes.

23 Q All right. And when you say you maced them, what were
24 you using? A personal mace? A fogger? What were you using?

25 A As I testified earlier, I was at the bus incident using

1 my handheld mace that fits on my duty belt that's issued by
2 the police department.

3 Q Okay.

4 A Excuse me.

5 Q And did you indicate that in the -- in the I/LEADS report
6 that you did about those macings? Is that indicated in there
7 that you used your personal mace?

8 A I -- as I said, I used mace that is owned by the
9 department.

10 Q I know it's owned, yes. As opposed to a fogger. What
11 would you call that, not the fogger but the one you carry with
12 you?

13 A I would characterize that as a handheld canister of mace
14 or pepper spray, rather.

15 Q Okay. So in your -- did you indicate in your I/LEADS
16 report that you were using your handheld canister of pepper
17 mace?

18 A I submitted a portion of a narrative to be included into
19 the original I/LEADS report for this incident. So I don't
20 know if that's made it into an I/LEADS report yet or not.

21 Q Now, you're required to prepare an I/LEADS report every
22 time you use pepper mace; correct?

23 A Yes.

24 Q All right. Now, how many people -- as far as standing in
25 front of the bus, Ms. Ahmad was actually standing several feet

1 away from the bus, in front of the bus, linked with other
2 people; correct?

3 A The people I maced were standing directly in front of the
4 bus. And then also during the bus incident, one or two
5 individuals who had grabbed one of my officer's bikes.

6 Q Okay. Can you tell me, when you say directly in front of
7 the bus, do you mean -- what do you mean by that?

8 A People who were locked arms in front of the bus and also
9 who had arms interlocked in the bike rack of the bus. I
10 ordered them to get away from the bus, if not, they would be
11 maced, and my commands were not followed. I then deployed
12 pepper spray, and I directed it to the face of the folks that
13 were blocking the bus.

14 Q I'm trying to understand if there's a -- if Ms. Ahmad --
15 was she, as you recollect, holding onto the bike rack on the
16 bus?

17 A I don't remember specifically if she was holding onto the
18 bike rack or not.

19 Q Okay. Was she attached to people who were holding on --

20 A Yes.

21 Q -- to the bike rack? Okay. So in your recollection of
22 things, she wasn't several feet in front of the bus?

23 A Correct.

24 Q And if she was, is it possible that you're not the person
25 that maced her?

1 A I suppose, but as I said, I directed my mace -- 142

2 Q Uh-huh.

3 A -- towards the people that were impeding the egress of
4 the bus.

5 Q All right.

6 A And then I also directed, at that time, a burst of pepper
7 spray to folks that had grabbed onto my officer's bicycle. To
8 the best of my knowledge, that far up in front of the bike
9 line, nobody else was deploying pepper spray at the time.

10 Q All right. And did you arrest these individuals?

11 A I did not.

12 Q You did not charge them with resisting arrest?

13 A No.

14 Q Do you believe they were committing a crime at the
15 time --

16 A Yes.

17 Q -- you maced them? What crime?

18 A Failure to obey a reasonable order from a police officer.
19 Interfering with a police officer. Blocking traffic,
20 vehicular traffic, on the street.

21 Q Now, the -- how long had the bus been sitting, standing
22 there?

23 A At what point in time?

24 Q At the time when you believe that vehicular traffic was
25 being obstructed.

1 A I don't know.

2 Q I mean hours; correct?

3 A As I said, I do not know.

4 Q Well, how long had you been there?

5 A I -- we had been there at work since about 8:00 that
6 morning, and we spent the time between the bus incident and
7 the issuance of the verdict in the Jason Stockley case
8 shadowing protestors and denying access to several highway
9 ramps.

10 Q Okay. But the whole time you were there, the bus was
11 stationary?

12 A I don't know. I wasn't there. I was all over the place.

13 Q I meant the time that you were in the vicinity and you
14 could see the bus. Was it moving, or was it stationary?

15 A From the time that we got the orders to go in to the time
16 we got to the bus was probably between five and 10 minutes.

17 Q And was it stationary during that time?

18 A It was stationary because it couldn't go anywhere because
19 it was being blocked by protestors.

20 Q And you don't know how long it had been there and
21 stationary?

22 A No.

23 Q It's your understanding that before you maced the people
24 in front of the bus that you had to give them an order to
25 disperse?

1 A I never gave an order to disperse.

2 Q What did you do?

3 A As I testified to previously, I told them to move out
4 from the front of the bus, move out of the way from the front
5 of the bus.

6 Q So you would not consider someone saying, "Move on" or --
7 to be an order to disperse, would you?

8 A No.

9 Q What treatment did you give to the persons who you maced?

10 A None.

11 Q And why not?

12 A Because I was focused on getting the buses out of there
13 and then by the time it was -- we -- we didn't -- focusing our
14 efforts on arresting the folks that were in front of the bus
15 was not the priority at the time. The priority was bringing
16 the situation to a point where it was safe, which included
17 removing the buses from the angry crowd.

18 Q Okay. And I'm sorry. Maybe I misspoke. I was asking --
19 I wasn't asking why you didn't arrest. I was asking why you
20 didn't treat the individuals that you exposed to pepper spray.

21 A Because I didn't have an opportunity to arrest them.

22 Q Okay. You understand that policy requires you to treat
23 people who you expose to pepper spray?

24 A I'm well aware of that, yes.

25 Q When you -- when you heard Mr. Rossomanno give dispersal

1 orders, do you recall how many he gave?

145

2 A Are we going back to the Sunday night incident?

3 Q Yes, we're back to Sunday night, the 17th.

4 A Okay. It was numerous, but I don't recall specifically.

5 Q All right. And what does "dispersal" mean to you as a
6 police officer enforcing dispersal orders?

7 A Leave the area.

8 Q And what does "the area" mean?

9 A I guess that's something that has to be grounded in
10 common sense. If, again, I were a downtown resident and I
11 overheard police officers commanding me to leave the area, I
12 wouldn't be found anywhere close to what's going on there.

13 Q Okay. So if you're at 9th and Olive and there's a
14 dispersal order, is Washington and Tucker leaving the area?

15 A That's only a couple blocks away.

16 Q So is it leaving the area or not?

17 A I guess that's a pretty subjective question.

18 MR. ROTHERT: Okay. I have no further questions.

19 THE COURT: Redirect.

20 MR. MCDONNELL: No further questions for the
21 sergeant.

22 THE COURT: All right. You may step down.

23 THE WITNESS: Thank you, Your Honor.

24 THE COURT: We're going to take a 10-minute recess.

25 Court's in recess for 10 minutes.

1 (Court recessed from 3:08 p.m. until 3:22 p.m.)

2 THE COURT: All right. You may call your next
3 witness.

4 MR. RELYS: Defendants call Sergeant Brian
5 Rossomanno.

6 THE COURT: All right. Would you step right here to
7 the clerk to be sworn, sir?

8 THE WITNESS: Good afternoon, Your Honor.

9 THE COURT: Good afternoon.

10 **BRIAN ROSSOMANNO,**

11 HAVING BEEN FIRST DULY SWORN, WAS EXAMINED AND TESTIFIED AS
12 FOLLOWS:

13 DIRECT EXAMINATION

14 BY MR. RELYS:

15 Q Ready? Good afternoon, Sergeant. Could you please state
16 your name for the record?

17 A Brian Rossomanno.

18 MR. RELYS: And does the court reporter know how to
19 spell that?

20 COURT REPORTER: (Nods head up and down.)

21 Q (By Mr. Relys) Okay. What's your occupation?

22 A I'm a sergeant with the St. Louis Police Department.

23 Q And how long have you held that rank?

24 A Twenty years.

25 THE COURT: Excuse me a second.

1 THE WITNESS: Or I'm sorry. The rank?

2 MR. RELYS: The rank.

3 THE WITNESS: I'm sorry.

4 THE COURT: Hold on just a second. Excuse me.

5 I just want to remind the spectators that cell phones
6 are not allowed. They have to be turned off. When I see you
7 walking in, holding them in your hands it makes me wonder if
8 you're really following the rules.

9 Okay. Go ahead.

10 Q (By Mr. Relys) All right. How long have you held the --
11 well, let me back up. How long have you been a police
12 officer?

13 A Twenty years.

14 Q All right. And how long have you been a sergeant?

15 A Almost seven.

16 Q All right. And what's your current assignment?

17 A I'm assigned to the Bureau of Community Policing.

18 Q And what are your duties in that assignment?

19 A Main duties are I'm the coordinator for Civil
20 Disobedience Team. I'm also a supervisor for SWAT team.

21 Q Okay. And tell us briefly what the Civil -- CDT?

22 A CDT is what we refer to it.

23 Q Some call it CDT?

24 A Yes, sir.

25 Q What's that?

1 A Again, it stands for Civil Disobedience Team. It's
2 tasked with handling any events of civil unrest, protests,
3 managing protests, that sort of thing.

4 Q Okay. Have you been involved, in your capacity as a
5 police officer, in the police's response to the protests that
6 have emerged since the Jason Stockley verdict?

7 A Yes, sir.

8 Q All right. And were you involved on the day of that
9 verdict, on September 15th, 2017?

10 A Yes, I was.

11 Q Okay. We've talked a little bit in here over the past
12 couple days about an incident that occurred on that day, sort
13 of involving some buses?

14 A Yes, sir.

15 Q Were you involved in that incident?

16 A Yes, I was.

17 Q All right. Tell us briefly what your involvement was in
18 the bus incident.

19 A Our involvement -- we were staged at our Police Academy,
20 which is located on Tucker, just south of Clark. A crowd had
21 amassed at the intersection of Market and Tucker following the
22 announcement of the verdict, and they -- they had been there
23 for a considerable amount of time. Eventually, that crowd
24 conducted some marches and eventually ended up marching south
25 on Tucker to our location at the Police Academy. We had four

149
1 or -- I think, oh, we had all four CDT teams at that location.
2 And what developed eventually was kind of just a standoff. We
3 had some CDT lines formed facing to the north. We also had
4 some CDT lines formed facing to the west. And each group had
5 a group of protestors in front of those lines engaging them.

6 Q Okay. And you said there was a standoff?

7 A What I would describe as a standoff, basically, yes.

8 Q How is it -- once it was determined there was a standoff,
9 how is that -- what action was taken?

10 A I consulted with the incident commander, and we were both
11 in agreement that, you know, the best way to de-escalate the
12 situation was just to pull our officers out of the area.
13 While it was a standoff, tensions -- you could read that
14 tensions were getting a little higher. So it was our
15 determination, "Let's pull our officers out of the area and
16 hopefully de-escalate it."

17 Q Okay. And incident commander is who?

18 A Lieutenant Colonel Jerry Leyshock.

19 Q All right. And so the decision was made to move those
20 buses?

21 A Yes.

22 Q And did that -- did that occur?

23 A We attempted to. We loaded two buses up with our CDT
24 officers, and it was immediate. Even before all of our
25 officers were on the bus, as soon as we broke our lines down,

1 the group immediately surrounded both buses, and both buses
2 were unable to move.

3 Q Okay. Were the buses -- were there any -- besides
4 surrounding the buses, were there any other acts of violence
5 from the crowd?

6 A Yes. They immediately -- several suspects began throwing
7 rocks and bottles at the buses. I put out multiple
8 descriptions of individuals that I observed myself throwing
9 rocks at the buses, throwing rocks at the officers as they
10 attempted to get on the bus. It became very violent very
11 quick.

12 Q And where were you during this?

13 A I was on Clark, kind of bouncing back and forth between
14 the west and east side. I'm sorry. Tucker. Kind of bouncing
15 back and forth between the west side and east side of the
16 street.

17 Q Okay. We've had -- we've had previous witnesses -- well,
18 I guess one other witness, Lieutenant Sachs, described his
19 location, which was inside the Police Academy building.

20 A I believe they were, yes.

21 Q You were not -- you were not with them?

22 A No. I was down on the street.

23 Q You were down on the street. Okay. So you witnessed --
24 you personally witnessed while you were down on the street
25 people throwing rocks and bottles?

1 A Yes, sir.

2 Q Anything else they were throwing?

3 A It appeared at that time it was just rocks and water
4 bottles.

5 Q Okay. And they were surrounding the buses?

6 A Yes. There were two buses that remained, and both buses
7 were completely surrounded, unable to move.

8 Q So how -- what action was taken then by the police?

9 A At that point, we decided we were going to pull one team
10 off of one of the buses and form what we call a skirmish line
11 with those officers to create some space between the
12 protestors and the buses so that way we could get one bus out,
13 and then we were going to utilize the bikes to come in and
14 help us get the other bus out.

15 Q Okay. And so when you're -- I was going to -- that was
16 my next question. When you're talking about the officers
17 coming off the buses, we're talking about the CDT officers?

18 A Yes, sir.

19 Q And those are the guys in the tactical gear?

20 A Correct.

21 Q All right. How did that plan work?

22 A It took us a second to get it organized, to get those
23 officers -- it was hard for them to even get off the bus
24 because, as I said, the protestors had it surrounded. So they
25 almost had to push their way off the bus to get out and form a

1 line. I believe the first line we formed was kind of on the
2 west side of the buses, and we tried to turn it kind of like a
3 door on a hinge to face north just to create that buffer space
4 so the buses could reverse out because going forward wasn't an
5 option. So we were going to try to back them out.

6 Q Okay. And was that ultimately successful?

7 A Eventually.

8 Q How long do you think it took?

9 A Several minutes. I'd say to get both buses out of there
10 it took probably a half hour, if maybe 20, 30 minutes.

11 Q Okay. And did the protestors ever sort of let up and
12 decide it was okay, you know, grant the buses leave to leave?

13 A Not willingly, no. And there were several arrests as a
14 result.

15 Q All right. Do you remember what those arrests would have
16 been for?

17 A It would have been for interfering. I know the one was
18 for interfering. There was one arrest for multiple counts of
19 assault on law enforcement for throwing rocks, a subject that
20 was taken into custody that we identified as one of the guys
21 that was throwing rocks.

22 Q Any dispersal orders given during this time period?

23 A There were.

24 Q How were those given?

25 A They were given initially by me from the PA in my

1 vehicle, but then once I was out on foot, I was verbally
2 continuing to give those orders.

3 Q Okay. Munitions?

4 A There were no chemical munitions used.

5 Q Okay. Any other notable events or incidents of violence
6 downtown that day?

7 A Later on, yes, there were.

8 Q Tell me about that.

9 A When we were finally able to get the buses out of there,
10 again, our goal was to de-escalate, disengage, and we pulled
11 out of the area. We did make the mistake of leaving a police
12 vehicle behind. There was a police vehicle parked on Clark,
13 directly in front of the main entrance of the old police
14 headquarters. As we pulled out of the area, the crowd
15 filtered back into that intersection, and it didn't take long
16 before damage to that vehicle started taking place.

17 Q Okay. And where were you? Did you witness the police
18 vehicle being damaged?

19 A I did, yes.

20 Q Where were you?

21 A I was up near the Scottrade Center initially, coming down
22 like 14th and Clark. All I could really see was that somebody
23 was standing on top of the vehicle, and then there was a big
24 crowd around the car.

25 Q Were there police officers in the area at that time?

1 A There were, yes.

2 Q And in the area of that police vehicle, the direct
3 vicinity of that police vehicle?

4 A Not immediately, not when the damage to the vehicle
5 started, but some officers had moved in to try to, you know,
6 put a stop to it.

7 Q Okay. And how -- what was the police response, if any,
8 to the police vehicle being damaged?

9 A Initially, I believe it was some Special Ops detectives
10 had gone down there, and they were quickly overwhelmed because
11 there weren't that many of them. I would say maybe 10
12 officers initially went down. They were immediately
13 surrounded by the crowd, and I could see -- as I approached
14 from the north, I could see items starting to be thrown at
15 them. At that point, I believe the bikes came in, and they
16 tried to do what we call a separation tactic. The bikes tried
17 to come in and separate the crowd from the vehicle and our
18 officers that were being assaulted by thrown items.

19 Q Okay. You talk about the Special Ops guys. What were --
20 how were they dressed? What was their -- what was their
21 uniform?

22 A Normal uniform.

23 Q Tactical gear?

24 A No, sir.

25 Q All right. And you said the bikes came in to assist?

1 A Correct.

2 Q What were the bikes -- how were they outfitted?

3 A I'm sorry?

4 Q How were they outfitted?

5 A Normal bike uniform with bicycle helmets really as their
6 only protective gear.

7 Q So no armor?

8 A No, sir.

9 Q No shields?

10 A No, sir.

11 Q Okay. Did the CDT teams get involved in this?

12 A Yes, they did.

13 Q Describe their involvement -- the CDT.

14 A The bikes were relatively ineffective initially, and then
15 once we saw the objects being thrown, obviously, we have
16 officers out there without their personal protective
17 equipment. So we had to bring CDT in. We brought them. To
18 be honest with you, I can't remember what direction they came
19 from, but eventually, they formed a line. Kind of the same
20 separation technique we tried to do with the bikes, we did
21 with the CDT officers, and they were able to form a line kind
22 of facing to the northeast through the intersection, between
23 the crowd and the police vehicle and the other officers.

24 Q All right. And what was the purpose of forming that
25 line?

1 A Mainly, again, to get separation between the crowd and
2 the vehicle and those officers that were being assaulted by
3 the items that were being thrown, but at that point, we wanted
4 to push them north away from that intersection.

5 Q So you wanted to push people off of Clark north?

6 A Correct. On Tucker.

7 Q Okay. So it would sort of be north. It would be sort of
8 like northeast or -- is that -- is that right?

9 A Northeast, yes, sir, that would be accurate.

10 Q Okay. Were you ultimately successful in doing that?

11 A Ultimately, yes. It took some time.

12 Q Any officers injured during that incident that you
13 observed?

14 A Yes, there were.

15 Q How -- are you aware specifically of any of those
16 injuries?

17 A The ones I remember are Sergeant John McLaughlin, I
18 believe, got hit in the head with a bottle, and then we had
19 two officers that we sent over to EMS to get treated for some
20 sort of unknown substance was thrown on them, and they were
21 feeling a burning sensation to their skin.

22 Q How about -- backing up to the bus incident, any officer
23 injuries sustained during that?

24 A There were officers that were hit by items, but as far as
25 I know, they all refused treatment.

1 Q Okay. Did the -- did -- after the streets were cleared
2 or the protestors were dispersed after the damaged vehicle
3 incident --

4 A Yes, sir.

5 Q -- were there any more notable instances of violence
6 downtown?

7 A Umm, not really on that day, no.

8 Q Okay. How about elsewhere in the city?

9 A On the evening of Friday of the verdict, yes, sir. We
10 had some issues in the Central West End.

11 Q Okay. And were you involved in the police response in
12 the Central West End?

13 A Yes, I was.

14 Q All right. Tell us -- tell us how the evening developed
15 in the Central West End.

16 A We had actually, once again, pulled out of the area in an
17 effort to de-escalate, and most of our officers were back at
18 our staging area. Then we received word of -- that a march --
19 a group had formed in the Central West End. I believe around
20 Euclid and Maryland. I may be wrong about that. But that
21 they were marching, and at that time, it was peaceful. So it
22 was our approach to not intervene, to let them march, let them
23 do their thing, and just stay back and see what happens.

24 Q And were you involved in monitoring that march?

25 A I was, yes.

1 Q Was it peaceful?

2 A It was. They were blocking the streets and such, but no
3 acts of violence or anything like that.

4 Q Okay. Did the demonstrations or the protestors remain
5 peaceful throughout the night?

6 A No, they did not.

7 Q All right. Tell us -- tell us about how -- what changed
8 and when?

9 A They began to march. It was after sunset, and it was
10 clear, at least to us, that they were heading towards the
11 Mayor's residence, and then that drew concern for us, and then
12 once they arrived at the Mayor's residence, we received
13 numerous calls over the radio from -- we had Special Ops
14 detectives posted up on the Mayor's house, and we were
15 starting to get a lot of calls from them that they were being
16 overwhelmed. They had items being thrown at them. Damage was
17 being done to the Mayor's house, and so we responded to that.

18 Q And where -- when you started receiving these calls --
19 you said you had withdrawn; right?

20 A Correct.

21 Q So when you started getting this information about the
22 Mayor's house and you started receiving these calls, where
23 were you?

24 A I was still in the Central West End area. I want to say
25 I was down on Lindell, like around Lindell and Euclid. So I

1 wasn't that far away.

159

2 Q Were you -- you weren't with the command staff?

3 A I'm sorry?

4 Q You weren't with the command staff?

5 A No, sir.

6 Q You were out in your patrol car?

7 A Correct.

8 Q All right. And when you got those calls, what did you
9 do?

10 A I started heading towards that area because it seemed
11 pretty urgent. The calls for help from the Special Ops
12 detectives were -- you know, it wasn't -- they were actively
13 calling, "We need more cars up here."

14 Q And what was your sense of why they needed more cars?
15 Why was it urgent?

16 A Just the size of the crowd. They said that the crowd was
17 in the several hundreds and that they had items being thrown
18 at them. So that was really the exigent circumstances I was
19 looking at.

20 Q Are these the same Special Ops guys who were involved
21 earlier in the day?

22 A Same unit. I can't say it was the same exact people.

23 Q Were they outfitted the same way?

24 A Yes, sir.

25 Q So tell us again what that was.

160

1 A Normal uniform. Their regular street soft body armor.

2 Some of them may have had helmets, but some of them didn't.

3 Q So sort of how you're dressed today?

4 A Correct. Yes, sir.

5 Q All right. And for the record, you're not wearing a riot
6 shield or anything like that?

7 A No. I'm in normal standard duty uniform.

8 Q All right. Okay. So you responded to -- what's the
9 approximate intersection or coordinates of this crowd in the
10 Central West End?

11 A I arrived at the intersection of Lake and Waterman.

12 Q Okay.

13 A And I had to stop there because there was -- there was no
14 way I could get up to -- I believe it's 502 Lake. There was
15 no way I could get up to there just because the crowd was so
16 massive and in the street. I wasn't even going to try to
17 drive my vehicle through it.

18 Q All right. Where did you park? What direction did you
19 come from, and where did you park your vehicle?

20 A I came from the east and parked my vehicle facing to the
21 east on -- on Waterman at Lake.

22 Q Okay. So you got pretty close to the intersection?

23 A I did, yes, sir.

24 Q All right. And do you have any sense about what time
25 this is?

1 A I would guess, ballparking, around 9:00.

2 Q All right. Was it dark out?

3 A Yes, it was.

4 Q And what did you see when you got to the intersection?

5 A I saw what can only be described as a crowd of several
6 hundred people in all directions, mainly to the north of me,
7 towards the Mayor's house, but there were also people to the
8 east and west.

9 Q And how were they behaving?

10 A A lot of running through yards, a lot of screaming and
11 hollering, and then there were continued calls from the
12 detectives at the house that they were being pelted with
13 thrown items. So I, on foot, made -- I made my way up to them
14 on foot.

15 Q All right. Did you see any of those items being thrown?

16 A Yes, I did. Numerous.

17 Q So you verified that through your own personal knowledge?

18 A Yes, sir.

19 Q What sort of items were being thrown?

20 A Rocks and bottles. Some bricks.

21 Q Were you able to determine, with a crowd that size, where
22 exactly the rocks and bottles were coming from?

23 A From within the crowd. I couldn't pinpoint individuals.

24 The crowd was just so big, and you would just see items.

25 You'd see the trajectory come from within the crowd towards

1 the officers.

162

2 Q All right. Any of those items hit the officers?

3 A I'm not sure.

4 Q Okay. Any property damage at that location that you saw?

5 A Yes, there was.

6 Q What did you see there?

7 A I observed the Mayor's house had a broken window and then
8 some red paint splattered on the side of it. At that point,
9 that's all the property damage I'd seen, but there was much
10 more to come.

11 Q All right. Okay. So you respond to the scene. You make
12 your way to the house where the Special Ops guys are
13 stationed.

14 A Right.

15 Q What happens after that?

16 A Pretty much almost immediately when I got there, we
17 turned to face the crowd, and we had very limited manpower.
18 There was only so much we were going to be able to do, but we
19 started ordering the people to leave the area. And fairly --
20 within a minute of being there, I received a faceful of what I
21 determined to be pepper spray from within the crowd. And it's
22 documented on our radio tapes. I told the dispatcher, "I've
23 been hit. The crowd has their own mace. I've been hit, and
24 I'm going to be incapacitated for a few minutes," which I was.

25 Q So you got hit by pepper spray at the house?

1 A Yes, I did.

2 Q And how long did it take you to -- did you -- did you
3 take any action to get rid of the pepper spray?

4 A There were people -- again, I couldn't even tell who it
5 was. I was fairly confident that it was police officers I was
6 surrounded by. So I didn't feel too panicked, but there were
7 officers handing me water bottles, and I was kind of just
8 doing some self-aid to get myself, you know -- you know, to
9 get my faculties functioning again.

10 Q How long do you think that took?

11 A It took at least five minutes, if not longer.

12 Q All right. If I asked you questions about what was
13 happening around you during that time period, would you be
14 able to answer them?

15 A During that five to seven minutes, not really. Only that
16 I could hear a lot of screaming and yelling and I could hear
17 officers ordering people to leave the area, but other than
18 that, I couldn't see anything.

19 Q All right. Once you got -- once you recovered your
20 faculties, what happened next?

21 A At that point, things have kind of gotten under control
22 at the house, at the Mayor's residence. I'm sorry. So I
23 headed back south, down Lake, back to my vehicle.

24 Q Okay. And what did you see?

25 A By that point, Lieutenant Colonel Leyshock had arrived,

1 and I consulted with him, and he really was in agreement that
2 we had an unlawful assembly. And so I got into my vehicle,
3 and I immediately started announcing that the assembly was
4 unlawful, and I started giving a dispersal order.

5 Q Okay. And is that the dispersal order that -- what are
6 the general contents of that dispersal order?

7 A I announce, "This is an unlawful assembly," and I
8 articulate what is making it unlawful. "You are impeding the
9 flow of traffic." For this particular incident, it was an
10 unlawful assembly. "You are destroying property. You are
11 assaulting officers." So I line out for them what the
12 violation is.

13 Q Okay.

14 A Give them an avenue of egress, what direction it is we
15 want them to go to leave the area, and generally tell them the
16 amount of time they have to do so. And we also advise them
17 that anybody who remains in violation of that order is subject
18 to arrest and/or other actions, up to including the deployment
19 of chemical munitions.

20 Q Okay. Is that essentially the order that you gave at
21 that time?

22 A Yes, sir.

23 Q And you gave that, you said, over the PA system of your
24 car?

25 A Yes, sir.

1 Q All right. Did people disperse when you -- 165

2 A Some did.

3 Q Okay. And when you say some did, how do you know they
4 were dispersing?

5 A We could see people immediately walking, especially to
6 the west. A lot of people left to the west. The group to the
7 east was a little more defiant than the group to the west, but
8 you could see people walking down the street, walking through
9 yards, getting to the sidewalks, and you could see them
10 walking away. So it was my assumption that they were
11 complying.

12 Q All right. After you gave that dispersal order -- and
13 you did warn about chemical munitions at that point?

14 A I'm sorry?

15 Q I said you did warn about chemical munitions?

16 A Yeah. It's a standard. It's built into the dispersal
17 order that chemical munitions -- that chemical munitions might
18 be used.

19 Q All right. And that was part of that dispersal order you
20 gave?

21 A Yes, sir.

22 Q What happened after that?

23 A By that point, we had -- CDT teams had arrived both from
24 the City and County. The County CDT team formed a line to the
25 west, facing to the west. The City team formed a line facing

1 to the east. The crowd to the east was considerably larger
2 than the crowd to the west. We were still having items thrown
3 at us from within the crowd. And then we were just formed up,
4 and the determination was made that we were going to hold the
5 County line to the west and we were going to have the City
6 line to the east push that crowd back towards Kingshighway.

7 Q What was your -- did you take -- did you take any action
8 at this time?

9 A Yes, I did.

10 Q What'd you do?

11 A Again, after several dispersal orders, I got out of my
12 vehicle, and again, we were still receiving incoming rocks and
13 bottles. There was a group to the west. Although they were
14 smaller, they were still throwing items. So I deployed one
15 handheld inert smoke grenade to the west in an effort to just
16 disperse. Again, inert smoke. It wasn't gas or anything.
17 When that didn't work, I deployed one handheld OC grenade to
18 the west.

19 Q About how long -- when you say it didn't work, how long
20 about did you wait?

21 A I'd say two to three minutes.

22 Q Okay. And the second thing you deployed was what again?

23 A It was a handheld OC grenade.

24 Q So it's essentially pepper spray?

25 A Essentially, yes, sir.

1 Q And did that have any effect on the protestors that you
2 saw?

3 A It got a few more of them to leave, but it didn't have
4 the effect that I would have liked. The crowd still -- the
5 crowd, for the most part, still remained, but some people did
6 leave.

7 Q All right. And this was to the west, you're saying?

8 A Correct.

9 Q Where the County CDT is pushing?

10 A Well, they weren't pushing. They were holding at that
11 point --

12 Q They were holding the line.

13 A -- because they didn't really have the numbers up there
14 yet to do a push.

15 Q Got it. Okay. What happens after you deploy the smoke
16 and the handheld OC?

17 A I remained there momentarily, and our City team started
18 pushing to the east. And as they did so, they got probably a
19 couple blocks away from where I was towards Kingshighway, and
20 then that's when I heard a call come out for an officer down.
21 I had no idea if -- it didn't articulate was that the result
22 of gunfire, were they hit by something, but it sounded like
23 things were kind of still very fluid and very out of control
24 to the east while the west side had kind of calmed down. So I
25 decided I'm going to go ahead. I checked with the county

1 commander. You know, I made sure they were okay with what
2 they had. He stated they were. So then I went to the east to
3 help assist down on that end.

4 Q Okay. So you went and rejoined the City folks going
5 east?

6 A Yes, sir.

7 Q About where was it that you rejoined them? Were you at
8 Kingshighway yet?

9 A They had made it to Kingshighway by the time I caught up
10 to them.

11 Q Okay. There's been some testimony and evidence in this
12 case about some of the protestors running into a couple of --
13 there's a synagogue and a church at the intersection of
14 Waterman and Kingshighway?

15 A Correct. It's at the southwest corner, I believe.

16 Q Okay. Did you -- were you there when any of the people
17 ran into that building?

18 A They were already in there by the time I got up there.

19 Q Okay. Did you see anybody chase them in there?

20 A No, I did not.

21 Q Okay. Did you chase them in there?

22 A No, I did not.

23 Q Okay. So you get to the intersection. You rejoin the
24 unit or the CDT teams pushing east on Waterman at
25 Kingshighway. Where does it go from there?

1 A Most of the protestors had gone across Kingshighway, and
2 I believe it turns into Hortense there.

3 Q Okay.

4 A Is that accurate?

5 Q I'll tell you that it is.

6 A So they were on Hortense, across from Kingshighway, and
7 the entrance to that street -- there's kind of these concrete,
8 decorative things that they were hiding behind, and every now
9 and then, they'd pop up from behind it, throw a rock, duck
10 back down, that sort of thing, and so there was at one point
11 there where I deployed another smoke and another handheld OC
12 grenade because we were catching rocks being thrown from them
13 hiding behind those -- I'm struggling to find the word to
14 describe -- the concrete entrance to that neighborhood.

15 Q Sort of gateway?

16 A Right.

17 Q All right. Did that have any effect -- the smoke and
18 the -- and the --

19 A Not really. They just moved a little more east.

20 Q Okay. Were any more warnings given at that point?

21 A Yes. We were giving warnings the whole time.

22 Q Okay. And how were those warnings being given?

23 A At that point, they were given just verbally by me. I
24 did not have my vehicle with me. So I didn't have the PA, but
25 it was just across the street. I don't think they had any

1 issues hearing me.

170

2 Q All right. And would that be the full warning, or was it
3 some sort of truncated warning?

4 A A little bit of both.

5 Q Okay. And if it was truncated, in what fashion? What
6 sort of -- what would you have like left out of the main
7 warning?

8 A The verbiage probably just would have been, "It's time to
9 leave. You need to leave the area. This is an unlawful
10 assembly." And then I would give the verbatim order as well.

11 Q All right. So you gave it both ways at that point?

12 A Yes, sir.

13 Q Okay. All right. What happened after that?

14 A We continued to push. Because as I came down Waterman, I
15 observed -- just following the path of the crowd, I observed
16 numerous vehicles that had been vandalized with "FTP"
17 spray-painted on the side of them, windows broken out.

18 Q FTP -- what does that mean?

19 A Pardon me, but "Fuck the police."

20 Q Okay.

21 A So as we, you know, saw them congregating on the next
22 block over, we had no reason to believe they wouldn't do the
23 same thing on that block. So, again, our goal at this point
24 was to disperse the crowd. So we continued our march east, I
25 guess, onto Hortense towards Euclid.

1 Q And what were the conditions like on Hortense?

2 A The same. I observed a lot of vehicles had been
3 vandalized, and as we moved, they moved. So the push
4 continued on to the east, and they continued to throw items at
5 us as they went.

6 Q Did you engage -- did you or the officers you were with
7 engage the protestors with any more munitions during this
8 period?

9 A I did not. The -- there was some SWAT officers with us,
10 and there were some PepperBalls fired, but other than that,
11 there were no other munitions used just because of that
12 neighborhood. There's no reason to -- you know, I didn't want
13 to destroy that street essentially.

14 Q Okay. How about mace or OC spray?

15 A At that point, I didn't observe any of that.

16 Q Okay.

17 A They were keeping enough of a distance from us that it
18 would have been ineffective.

19 Q All right. So it sounds like they were keeping sort of
20 like a calculated distance between themselves and you?

21 A Yes, sir.

22 Q All right. After you -- does -- Hortense is sort of a
23 short street?

24 A Yes, sir.

25 Q And what does it empty out onto?

1 A Empties out onto Euclid.

2 Q All right. Did you eventually come to Euclid?

3 A We did.

4 Q And tell us what happened then.

5 A We held our position at Euclid for quite some time,
6 mainly, because there were still issues going on behind us and
7 to the south of us. So we held at Euclid. The group of the
8 protestors at that point was fairly small. I'd say 25 to 30
9 that we were dealing with. We were aware that there were
10 other scenes active at the time. They were mainly on the east
11 side of Euclid. We stayed on the west side, again, within the
12 confines of the decorative gate. Again, I apologize. I can't
13 come up with a better way to describe it. So it was kind of
14 like I described earlier, kind of a standoff at that point.
15 We were kind of just letting them be there for a minute
16 because we didn't have the resources to do much more than that
17 at that point.

18 Q All right. I mean, were they still under orders, in your
19 mind, to disperse?

20 A Absolutely.

21 Q Had they been told to disperse?

22 A Yes.

23 Q Just one time?

24 A Dozens of times.

25 Q Okay. But they're still hanging around?

1 A Yes, sir.

2 Q And you say that you're sort of at a standoff. Is that
3 because -- is that because you were okay with them hanging
4 around there?

5 A No, but we were kind of at a point where we were just
6 kind of waiting for direction from the commanders of what they
7 wanted us to do because, as I said, I knew -- just based off
8 the radio transmissions, I could tell that there were some
9 issues to the south of us that they were dealing with. We
10 still had -- as far as I knew, we still had the County back
11 there at Lake dealing with an issue to the west. So we were
12 kind of just, what we would say, standing by, waiting to find
13 out what it is they wanted us to do and who was going to need
14 help.

15 Q Are you still taking rocks and bottles at this point?

16 A At that point, not so much, no.

17 Q At some point, did you get orders to move from that
18 location?

19 A Yes. We were told to push that crowd north in an attempt
20 to disperse them and if we had to start making arrests we
21 could do so.

22 Q Okay. And did you -- was it your job or your assignment
23 to lead that team?

24 A Yes, it was. I had the South Patrol CDT team was with
25 me, and there's a lieutenant that's in charge of that. So the

1 lieutenant would have actually been in command of that team,
2 but I was certainly there to assist the lieutenant in managing
3 that.

4 Q And who was that lieutenant?

5 A It was Lieutenant Bill Kiphart.

6 Q Okay. He was in charge of the South CDT team?

7 A Yes, sir.

8 Q Is that the team that went north?

9 A Yes, it is.

10 Q So in this case, South went north?

11 A Correct.

12 Q All right. And you went with this group of CDT officers?

13 A Yes, I did.

14 Q And you went -- you're traveling north on what street?

15 A On Euclid.

16 Q And how far north did you go?

17 A We went about three blocks, up to McPherson.

18 Q Okay. And McPherson is the street where on the -- it has

19 Pi Pizza?

20 A Correct. That's on the northeast corner of the
21 intersection.

22 Q And also Left Bank Books if I'm incorrect or correct?

23 A I believe, yeah, Left Bank Books is on the southwest
24 corner.

25 Q Southwest. All right. Okay. So you pushed forward to

1 that intersection?

2 A Correct.

3 Q How many officers are with you?

4 A I had one CDT team, which would be approximately four
5 squads. So about 40 officers.

6 Q Okay. And is this tactical -- tactical officers?

7 They're in tactical gear?

8 A They're in personal protective equipment, CDT gear.

9 Q Okay. And is the lieutenant with you, or is the
10 lieutenant back further south?

11 A Lieutenant was with me. Lieutenant Kiphart was with me.

12 Q All right. What happened when you reached the
13 intersection of McPherson and Euclid?

14 A We reached that intersection, and there were some people
15 that had come out of the businesses to kind of just watch what
16 was going on, but there was a group to the north of McPherson,
17 the same group we'd been dealing with when I described the
18 little standoff we had once we hit Euclid. That same group
19 had pushed north, and they were in the middle of the street.
20 I should go back. When we were at Euclid and McPherson, we
21 started to see a lot of cars were coming by, a lot of cars
22 with some familiar faces that I'd known to be with the protest
23 group. So we knew vehicles were involved at this point.

24 Q What do you mean vehicles were involved?

25 A Oh, as they -- they would drive up and down -- the street

1 was still open at that point. As they'd drive up and down the
2 street, they would yell and curse at us and that sort of
3 thing. And, again, faces that I recognized from earlier. So
4 I knew that they were there participating in the protest.

5 Q So the protestors are getting around not just on foot but
6 in cars?

7 A Some in cars, yes, sir.

8 Q Okay.

9 A So that's an obvious concern. So when we reached
10 McPherson, as I said, we had that group that was just to the
11 north of us in the street, but also, some cars had amassed up
12 there too, and that creates for us an obvious officer safety
13 concern with a vehicle driving into our line or something like
14 that. I had communicated with some Special Ops detectives,
15 and at that point, we were going to try to effect some arrests
16 if we could. We had given numerous orders to leave. They
17 were violating that order. So at that point, we felt that
18 failure-to-disperse charges were authorized, and we were going
19 to try to make some arrests. The problem with that is they
20 were so far enough away from us that if we tried to send an
21 arrest team out to get them, they would just -- and we would
22 just continue this push north until who knows when. So some
23 Special Ops detectives advised me that they were going to come
24 from an alley; they were going to go north to, I guess, the
25 north alley of McPherson, and they were going to try to come

177
1 out the alley and see if they could effect some arrests on the
2 street. As that was happening, I observed the subjects in the
3 street start throwing rocks to the west towards that alley
4 where I believed the Special Ops officers to be. So,
5 essentially, those officers had rocks being thrown at them.
6 So at that point, one of the SWAT officers did launch some
7 chemical munitions down the street to try to disperse them and
8 to put an end to the assault with the rocks, and I also threw
9 a handheld smoke in an attempt to disperse the crowd.

10 Q Okay. And were warnings given at this intersection?

11 A Yes, sir. Numerous.

12 Q How were they given?

13 A Verbally from me. Again, I didn't have my car. I didn't
14 have the PA, but they were within a distance where they -- I
15 was saying it loud enough that I felt they could hear it.

16 Q And this was probably the same group that had heard
17 warnings before?

18 A Absolutely.

19 Q Did the -- did the smoke and the munition that you fired
20 have any effect?

21 A The munitions fired by the SWAT officers didn't really
22 have the effect. The smoke definitely didn't have the effect
23 because I simply didn't throw it far enough.

24 Q I'm sorry. I got that wrong. You threw the smoke?

25 A I threw the smoke, yes, sir.

1 Q Sorry.

2 A They -- eventually, they -- it pushed them a little
3 farther north to where, again, us going up there and trying to
4 effect an arrest wasn't going to be plausible. So we just
5 kind of held our position right there, and the detectives
6 pulled out. So they stopped throwing the rocks, and at that
7 point, we were kind of back at a standoff again.

8 Q How long did that last?

9 A At least 30 minutes, if not longer.

10 Q So you were sort of standing at that intersection for
11 about 30 minutes?

12 A I would say so, yes, sir.

13 Q Okay. At some point, did -- did people from the
14 restaurant engage you?

15 A Yes, they did.

16 Q Tell us about that.

17 A At first, it was verbally, being not in support of us, to
18 say the least. And then as we had the issue with the subjects
19 to the north and the SWAT officers projected their gas -- when
20 I threw my smoke, as I said, my smoke didn't go -- it wasn't
21 one of my better throws. It didn't go very far. One of the
22 patrons from the pizza restaurant actually ran out into the
23 street, picked up that smoke canister, and threw it back at
24 us. At that point, one of the SWAT officers fired some
25 PepperBall rounds at him. I don't think he hit him. He ran

1 into the restaurant. Lieutenant Kiphart made the
2 determination we were going to try to effect an arrest on that
3 subject for throwing the item back at us, and as they
4 approached the restaurant, a gentleman who I believed to be
5 the owner of the restaurant came up, locked the door, and
6 prevented the officers from getting inside and making that
7 arrest.

8 Q After that happened, did you take any more action to try
9 to get inside that restaurant?

10 A No, we did not.

11 Q Okay. How much longer do you think after that incident
12 you've described with the patron from the restaurant picking
13 up the smoke canister and throwing it at you and the
14 PepperBalls being fired back and running back into the
15 restaurant, all of that -- how long after that do you think it
16 was between that and when you ultimately left the area?

17 A We pulled off to go south probably within five minutes.
18 It wasn't long at all.

19 Q And that's just based on your memory?

20 A Yes, sir.

21 Q All right. And your ultimate decision to fall back and
22 go back south -- why'd you decide to leave and go back south
23 at that point?

24 A The team that was working to the south -- I can't
25 remember if that was Central Patrol or North Patrol -- they

1 had a fairly sizable group at Lindell and Euclid that they
2 were dealing with, and so they wanted some help. They were
3 worried about somebody coming around, like on Maryland,
4 somebody coming around from their west flank. So they wanted
5 a team to fall back down there and then shut off kind of
6 Maryland and Euclid area to prevent them getting flanked. So
7 we pulled off from our position at McPherson and moved down
8 there.

9 Q So when you decided to pull off the position at
10 McPherson, were you guys satisfied at that point that the
11 folks you'd been chasing or following up north that way had
12 dispersed or at least stopped being an issue in the immediate
13 issue?

14 A They -- at that point, they were far enough away where we
15 couldn't address them really anyway, and at that point, the
16 vehicles that I was concerned about had pulled off. So I felt
17 the more pressing concerns were to our south.

18 Q Okay. All right. So you -- were you involved or -- or I
19 think you just told us about the reasons why you were --
20 another reason why you were pulling south is because you might
21 have needed to help the teams that were going south?

22 A Correct.

23 Q Did you have any involvement in that?

24 A Not really, no. We were kind of just a support element
25 at that point.

1 Q Okay.

2 A We didn't directly engage the crowd that was down on
3 Lindell.

4 Q We've heard some testimony about a ballistic vehicle that
5 was authorized to use some rounds in the area of Lindell and
6 Kingshighway. Were you involved in that at all?

7 A No, I wasn't.

8 Q Okay. Anything else in the Central West End on the
9 evening of Friday, September 15th, that you were involved in
10 that's sort of noteworthy in the sense of engaging protestors?

11 A No, sir.

12 Q Okay. Were you involved -- were there protests on the
13 following Saturday?

14 A Yes, I was.

15 Q And you were involved in that --

16 A Yes, I was.

17 Q -- the response at least? I'm assuming you weren't a
18 protestor.

19 A I'm sorry?

20 Q I said I'm assuming you weren't a protestor.

21 A No, no. I was responding.

22 Q You were involved in the police response?

23 A Yes.

24 Q Tell us a little bit about your involvement, just
25 briefly, involvement in the police response on that Saturday

1 night.

2 A Yeah. Saturday, if I remember correctly, was mostly
3 centralized in The Loop area. During the day, there was an
4 organized march. Maybe late afternoon, mid to late afternoon,
5 there was an organized march that started -- I believe they
6 met at Cicero's Pizza in U. City. They had a pretty sizable
7 group, but it was peaceful for the most part. They had
8 marched east on Delmar. They came south on Skinker. If I
9 remember correctly, they then went east on Forest Park, north
10 on maybe DeBaliviere to whatever that next street is, and they
11 came west back to Skinker. They basically made a big loop in
12 that area, the Delmar-Skinker area. We stayed off. We just
13 monitored. Again, it was peaceful. Only laws being broken
14 were the blocking of the streets, which we were willing to --
15 more than happy to tolerate, and eventually, they made their
16 way back to their original location in U. City.

17 Q Was that all during the day?

18 A Yes, it was, during the daylight at least.

19 Q Okay. And did it ever become necessary for the police to
20 engage protestors after they became violent?

21 A Yes.

22 Q Tell us just a little bit about that.

23 A As we were -- we were staged kind of in Forest Park, at
24 least where I was. We were basically informed by our command
25 that it's going to be U. City's operation and St. Louis County

1 can't intervene until U. City requests it and then from there
2 we can't intervene until St. Louis County requests us. So we
3 were kind of just at a standby mode at that point.

4 Listening to the transmissions on the radio, it became
5 pretty obvious that the U. City officers were overwhelmed
6 fairly quickly. There were reports of them having items
7 thrown at them, storefront windows being broken, officers
8 being assaulted. So it didn't take long before U. City
9 requested the County to come in and help.

10 When they did that, when the County started to respond,
11 we went and we began amassing our resources, and we went and
12 staged on -- I want to say Kingsland, just north of Delmar in
13 U. City. We went and staged. We just wanted to be in a
14 position that we could get there fairly quickly should the
15 County request our assistance.

16 Q Did they?

17 A They did. It didn't take long before the County called
18 for our assistance as well. So we formed up our CDT officers.
19 We went down on Delmar, and County had the lead. They formed
20 the front lines. We kind of formed lines in behind them for
21 support, and it was their determination that they wanted to
22 push this crowd east and get them out of U. City.

23 Q And did you help them with that?

24 A We did, in a support role. Like I said, our lines were
25 behind their lines as we marched east.

1 Q So, primarily, your job or your involvement on that
2 Saturday was support, support involvement?

3 A Correct, until we hit the city limit. We pushed them all
4 the way to Skinker, and at that point, the City lines replaced
5 the County lines in the front, but by then the crowd had
6 dissipated to -- it was a very small number at that point.

7 Q Okay. Any arrests that were made by the City folks?

8 A Not by the City, no. I know the County made some
9 arrests, but we did not.

10 Q Okay. Now, there had been -- had there been any -- we
11 talked about the property damage; right?

12 A Yes, sir.

13 Q Did you also mention or did you -- was there any rocks,
14 bottles, that kind of thing thrown during the --

15 A There were, yes, several rocks and bottles thrown,
16 several, several windows broken.

17 Q Okay. I'm going to move on to the Sunday. Were there
18 protests on that Sunday?

19 A Yes, there were.

20 Q And this is September 17th, I believe.

21 A Yes, sir.

22 Q Were you involved in the police response?

23 A Yes, I was.

24 Q Tell us about how Sunday unfolded for you.

25 A Sunday kind of mirrored Saturday in that during the day

1 there was an organized march. They arrived at Police
2 Headquarters. It was pretty clear that they planned on being
3 there awhile. They had supplies dropped off. They had
4 pallets of water and food. And so we intended that we were
5 going to be there for a little while. They had a rally in
6 front of Police Headquarters, and eventually they marched west
7 on Olive. They went all the way past Harris-Stowe, which is
8 like at Compton, and I believe it was at Compton they made a
9 move to go to the south, and it was our belief they were going
10 to try to take a highway. The Highway Patrol dealt with that.
11 They formed a line with their CDT officers in front of the
12 highway, blocked them from access to the highway. So then
13 they went back north, back up to Olive, continued marching
14 west and, eventually, after what I considered to be a very
15 long march, eventually made their way back in front of
16 headquarters.

17 Q Okay. And your knowledge of all this -- is it based on
18 the radio traffic, or are you physically present?

19 A I was present for this. I observed it. And, again, we
20 did our normal routine of as long as they're marching, again,
21 they're taking the streets, but it was peaceful. No property
22 damage. No assaults. So we just monitored. We even blocked
23 traffic for them so no cars could be introduced into the
24 march, and there was no police interaction with protestors at
25 all.

1 THE COURT: So were you walking, or were you in a
2 car?

3 THE WITNESS: I was driving, ma'am.

4 THE COURT: You were driving. So you were just
5 driving along, following them?

6 THE WITNESS: Correct. Usually, it's myself and
7 Sergeant Jemerson. Usually, one of us will position ourselves
8 at the front, and then one of us will position ourselves at
9 the rear, just so we can monitor for activity and also divert
10 traffic away from them.

11 Q (By Mr. Relys) Is that what you were doing that day?

12 A Yes, sir.

13 Q Okay. So you described sort of shadowing this march,
14 what you described as a long march. What happens after, after
15 that march ends?

16 A They con --

17 Q About what time -- could you give us a little bit of an
18 idea, if you know, about what time we're talking to?

19 A It was getting close to dusk when they returned to
20 headquarters. Well, they -- I'm sorry. They went to
21 headquarters, and they remained there and continued their
22 demonstration in front of headquarters. Around dusk is when
23 it started -- that started to break up, and at that point, we
24 had actually -- as that organized protest broke up, we started
25 pulling our resources out. And actually, Lieutenant Colonel

1 Leyshock, at one point, called for all CDT officers to return
2 back to our staging area to get fed and get hydrated, and so
3 we had actually pulled everybody out of that area.

4 Q Okay. And when you say pulled out and returned to a
5 staging area, where's that staging area?

6 A Staging area was at Hampton and Elizabeth. So a
7 considerable distance away.

8 Q And that sort of involves getting these people on buses
9 and all that?

10 A Right. Everybody loaded back up on the buses and
11 conveyed back out to Hampton.

12 Q Sort of a slow way to move people around?

13 A I'm sorry?

14 Q Sort of a slow way to move people around?

15 A Absolutely.

16 Q Anyway, so you get out. You go back to your staging
17 areas. And I'm sorry. Tell me again what time we're talking
18 about approximately.

19 A This was around dusk. The sun had gone down, and as I
20 said, the organized protest was breaking up.

21 Q Okay. What happens after that?

22 A I personally -- I was heading back towards the staging
23 area. I got to about 44 and Grand when I started hearing
24 radio transmissions from our bike officers who had remained
25 downtown, as they're stationed out of downtown. So they

1 remained there. Started monitoring transmissions from them
2 about some incidents of there's another group marching,
3 another group of about 75 to 100 people had started marching
4 again, and that we were having some instances of property
5 damage as they marched.

6 Q So people marching. There's property damage. Any more
7 detail than that that you got from the radio?

8 A No. That they were mainly in around the 9 to 1000 blocks
9 of Olive is where they were at that moment, where the property
10 damage had initiated. And so at that point, as I said, I was
11 at Grand and Highway 44. So I got off the highway, did a
12 U-turn, headed back towards downtown.

13 Q So you went back. You were headed away with the rest of
14 the CDT folks, but you decided to turn back around?

15 A Correct.

16 Q All right. And what -- did you get back downtown?

17 A I did.

18 Q And what did you witness, or where did you go, and what
19 did you witness?

20 A I went towards -- at that point, the bikes were still in
21 the area of 9th and Olive. So that's where I went. And as I
22 drove down Olive Street, I could see the broken windows,
23 potted plants knocked over. All the things that they had
24 described on the radio were right there in front of my eyes to
25 see, and so I eventually linked up with two of the four bike

1 squads. I believe it was 8th and Olive.

2 Q Okay. And did you see any -- any crowds or protestors
3 or --

4 A I did. There was a group on the north side of Olive, and
5 they'd filtered up 8th Street. A lot of familiar faces, you
6 know, people I knew to be involved in the previous
7 demonstration earlier in the day.

8 Q Okay. And were they -- how were they behaving at that
9 point?

10 A Very rowdy, very boisterous towards the police, and not
11 in a positive manner.

12 Q Okay. And what action did you take at that point? Any?

13 A At that point, I kind of just observed because the bikes
14 were kind of handling it. The bikes were giving them
15 dispersal orders. I heard the bikes telling them it was an
16 unlawful assembly and so on. And so at that point, I was
17 really just kind of trying to be eyes and ears for the
18 incident commander, and I was on the phone with him, letting
19 him know what I was observing and what -- you know, we were
20 talking about what steps we needed to take to get our officers
21 back downtown.

22 Q And the incident commander, again, being Colonel --

23 A Lieutenant Colonel Leyshock, yes, sir.

24 Q All right. What happens after that? You sort of --
25 you're helping monitoring, providing information to Colonel

1 Leyshock.

190

2 A Right.

3 Q What happens after that?

4 A I headed back west, and I observed, again, more, more
5 property damage on Olive, around like the 9, 10 hundred
6 blocks, people running in every conceivable direction as the
7 bikes -- as I said, two squads of bikes had kind of formed a
8 line. There were still kind of two squads of bikes patrolling
9 the area, trying to ensure there was no more damage. So we
10 had, you know, people running from the bike officers. People
11 would see me and take off running. And so I just made my way
12 back west, and eventually, I went all the way back to 14th and
13 Olive because that's where I was going to meet up with
14 Lieutenant Colonel Leyshock and we were going to kind of game
15 plan what we were going to do.

16 Q Okay. And give us an idea of around what time we're
17 talking now.

18 A I would say this was maybe around 8:00, ballpark figure.

19 Q Ballpark. Was it dark?

20 A It was dark, yes, sir.

21 Q Okay. Is that based on your memory?

22 A Yes, it is.

23 Q All right. Okay. So do you ultimately end up meeting
24 with Colonel Leyshock?

25 A I did, and by this point --

1 Q I keep calling him Colonel Leyshock. It's Lieutenant
2 Colonel?

3 A Lieutenant Colonel Leyshock.

4 Q Lieutenant Colonel Leyshock. I apologize to the
5 Lieutenant Colonel. So you meet up with him?

6 A Correct. Again, at 14th and Olive. By that point, some
7 of our CDT teams are starting to show up, but certainly not
8 all of them. Highway Patrol had some officers down there, and
9 he was with Lieutenant Sachs, the SWAT team commander, and
10 they were kind of just kind of looking at the terrain, trying
11 to get information from the bikes of where the groups of
12 protestors were, and we were just kind of trying to decide
13 where we wanted to deploy what teams. You know, where do we
14 want to put South Patrol, where do we want to put North
15 Patrol, and so on.

16 Q Okay. And what sort of -- what decisions are ultimately
17 made?

18 A Eventually, they formed up the teams, but while that was
19 going on, the bikes started calling for help again down in the
20 area of, I want to say, St. Charles and Tucker. So I had
21 actually left 14th and Olive while they were still trying to
22 come up with what they wanted to do, and I went down to the
23 area of Tucker and St. Charles just to get eyes on and see
24 what it was the bikes were dealing with.

25 Q And what was it that the bikes were dealing with?

1 A A very rowdy crowd, some objects being thrown. And the
2 bikes had formed a line on St. Charles, just east of Tucker,
3 and they were just kind of holding their position because they
4 really didn't have resources to do much more than that and the
5 crowd was in front of them, to the west and a little bit
6 north.

7 Q And this is at St. Charles and Tucker?

8 A Yes, sir.

9 Q And the crowd is to the west and north?

10 A Correct. There's a parking lot on the north side of
11 St. Charles, just east of where the bike line was. So they
12 were on that parking lot, and they were out towards the street
13 and Tucker.

14 Q Okay. And you said that they didn't have the resources.
15 How were they -- how -- maybe I asked you this before, but how
16 are the bikes outfitted?

17 A Their normal bike gear -- just regular soft shirt, some
18 pants, some shorts, soft body armor, and their bike helmets.
19 No personal protective gear in terms of CDT gear.

20 Q So did that -- it sounds like the bikes were sort of in a
21 standoff of sorts?

22 A Correct. Yes, sir.

23 Q Did that standoff resolve itself in any way?

24 A Not initially for a while. At that point, after
25 observing the rocks being thrown, I consulted with Lieutenant

193
1 Colonel Leyshock, and he told me to go ahead and announce that
2 this was an unlawful assembly based on the fact that the
3 officers were being assaulted and based also on the fact that,
4 again, those bike officers don't have any personal protective
5 gear. So from my vehicle, on the PA system, right there at
6 Tucker and St. Charles, I gave a dispersal order.

7 Q Any idea about what time that was?

8 A It was probably -- it was probably at 9:00 or a little
9 after 9:00 at that point.

10 Q Okay. And the dispersal order you gave at that point --
11 do you know about what it would have been or what you would
12 have said? Do you remember?

13 A Yes. I would have said, "This is an unlawful assembly.
14 You are" -- I had them for impeding the flow of traffic
15 because they were in the streets as well as assaulting the
16 police officers. "You're ordered to leave the area. Anybody
17 who remains is subject to arrest and/or other actions, up to
18 including the deployment of chemical munitions. You may leave
19 the area by going north on Tucker or west on St. Charles," I
20 think is what I said.

21 Q Okay. And did they disperse?

22 A A few people left, but the group as a whole did not
23 leave.

24 Q Okay.

25 A They moved out to Tucker and then kind of congregated

1 more towards Washington, but they did not leave the immediate
2 area.

194

3 Q So they went north a little bit?

4 A A little bit, but I'm talking 25, 50 yards. It's not
5 like they left the area.

6 Q Okay. Did you consider that to be in compliance with the
7 order?

8 A Absolutely not.

9 Q Well, they did move; right?

10 A They did move.

11 Q But why is that not compliance?

12 A To disperse the area, it's basically that the
13 demonstration is over; it's time to -- for lack of a better
14 term, it's time to get in your cars and go home. Our goal
15 with a dispersal order isn't to merely relocate the problem;
16 it's to disperse the problem.

17 Q Okay. And did they disperse then?

18 A No.

19 Q No. Some of them did relocate?

20 A A very short distance. Let me emphasize that.

21 Q Okay. So some of these guys -- now they're in the area
22 of Washington and Tucker?

23 A Correct.

24 Q And what happens next?

25 A We -- basically, again, another standoff. The bikes had

1 kind of stayed where they were, and it took us a considerable
2 amount of time to get our assets in place where we wanted them
3 to be. So for, I would say, well over an hour, it was just
4 kind of a standoff point when at that point we were -- we were
5 giving them orders to leave, they weren't leaving, but we
6 didn't really have our assets in place to enforce that
7 dispersal order just yet. So it was kind of what I would
8 describe as just downtime at that point, but orders were being
9 continually given.

10 Q Okay. And who gave those orders?

11 A I did along with Sergeant Jemerson.

12 Q And how did you give the orders?

13 A Initially, several times through the PA of my vehicle. I
14 would say I did it at least nine, 10 times. And then also
15 there were -- to kind of set the scene for you, there were
16 different pockets of protestors or people in the area of
17 Washington and Tucker. There was a group on the northeast
18 corner.

19 Q Let me stop you for a second --

20 A Okay.

21 Q -- because you said protestors or people. Did it matter
22 to you at this point whether they were protestors or just
23 people?

24 A At that point, we wanted the area cleared of everybody.

25 Q Okay.

1 A For safety reasons on top of everything else.

2 Q Does your dispersal warning single out only protestors as
3 people who need to disperse?

4 A No. It says anyone who remains in the area is subject to
5 arrest.

6 Q And that's the standard warning that you give at all
7 times?

8 A Yes, sir. It's a verbatim, same every time.

9 Q Okay. You were telling us a little bit about how people
10 were positioned around that area. Could you continue there?

11 A Right. There were -- there was a pocket of people, you
12 know, on the north, northeast corner of the intersection.
13 There was a pocket of people on the northwest corner of the
14 intersection of Washington and Tucker. There were people
15 strown out on Tucker, in the street, on both sides, both
16 northbound and southbound lanes. So there were I would
17 describe as four to five different pockets of people that were
18 remaining in the area in violation of the order.

19 So in addition to the dispersal orders I gave on my PA,
20 Sergeant Jemerson and I both got out on foot, and we went to
21 each group individually and told them, "It's time for you all
22 to go." We were trying to be as clear as we possibly could
23 be.

24 Q So "It's time for you to go" -- is that -- is that your
25 verbatim commands to these people, or what did you say, or was

1 it more conversational?

2 A It was more conversation. You know, they were wanting it
3 explained to them why they had to leave, and so we were trying
4 to do our best to be as clear. "You know, we can debate the
5 circumstances here another time, but as far as right now, a
6 dispersal order has been given. You all need to leave the
7 area." It was those types of conversations.

8 Q Okay. So those people who asked you for explanations --
9 "Why do we have to leave?" -- what were you telling them?

10 A I was telling them that the assembly was declared
11 unlawful due to the property damage, due to the assault on
12 officers. You know, we felt that if we were to allow this
13 group to remain downtown that further property damage would
14 exist or would occur. And along with officers being
15 assaulted, that the behavior of the crowd as a whole couldn't
16 be tolerated anymore.

17 Q Okay. At this time, they weren't damaging any property;
18 right?

19 A At that particular moment, they were not.

20 Q And they weren't assaulting any officers?

21 A Correct.

22 Q But you said that you felt if they were allowed to stay
23 there, that that would continue?

24 A Right. And I should articulate that in that, you know,
25 that time earlier in the evening when I was driving up and

1 down Olive and Washington and I saw the groups of people
2 running from the areas where the property damage had occurred,
3 a lot of those same people were still present at Washington
4 and Tucker. So I had reason to believe that, though I didn't
5 personally see them conduct any of the property damage, they
6 were with the group that did, and so to me, that posed enough
7 of a threat that we could reasonably articulate a genuine
8 concern that more property damage would take place.

9 Q Did you feel as though it had been sort of a game of cat
10 and mouse all day?

11 A It had, and it usually is.

12 Q And you felt as though the time for that was over?

13 A The incident commander felt the time for that was over.

14 Q Okay.

15 A So I was just acting on his orders. But my personal
16 belief -- I agreed with the incident commander.

17 Q And you felt that if they hadn't been moved there would
18 be more problems?

19 A I was confident there would be, yes, sir.

20 Q All right. It wasn't your ultimate decision to tell them
21 to leave?

22 A No, it wasn't.

23 Q Was it your ultimate decision to effect a mass arrest?

24 A No, it wasn't.

25 Q Okay. Whose decision was that?

1 A The incident commander, Lieutenant Colonel Leyshock.

2 Q And at some point, a decision was made to effect the
3 arrests of the people who remained; right?

4 A Correct.

5 Q Can you tell us about that, to the extent you have
6 knowledge about that decision-making process?

7 A Yes. Once we had formed our teams up, one, the bikes
8 were formed up to the east on Washington. One of our CDT
9 teams had come up from the south. Another CDT team was staged
10 up north at Tucker and Dr. King. And at that point, the
11 egress route west on Washington was still open. We were still
12 giving that as the egress route as we continued to give our
13 dispersal orders, and that's documented in several sources.
14 And so once we got to the point the incident commander decided
15 they've had more than enough time to leave, that egress route
16 to the west was eventually closed by a CDT team.

17 Q And who gave that order? Do you remember or do you know?

18 A It was Lieutenant Sachs gave that order, and he was
19 acting, as far as I know, under the direction of Colonel
20 Leyshock.

21 Q Okay. And when those -- you said the route of egress to
22 the west was the last one to close?

23 A Correct.

24 Q And up until that point, people could have left west?

25 A Yes, absolutely.

200

1 Q So even after the lines formed on the east, the north,
2 and the south, there was still -- there was still time during
3 which people could have left?

4 A Right. They could have walked west on Washington and
5 left the area completely.

6 Q Do you have -- you told us already about how you were
7 giving warnings over your PA system?

8 A Correct.

9 Q And you told us a little bit about the efforts that you
10 and Sergeant Jemerson undertook to go and personally engage
11 with numerous of these people?

12 A Correct.

13 Q Do you have an idea of sort of what time frame that all
14 occurred over?

15 A That occurred probably between -- and that went on for a
16 good 45 minutes to an hour where we were out there talking to
17 people. So I would say between the range of 9:30 to 10:30, in
18 that area, was when we were actually out on foot, trying to
19 engage the protestors face-to-face and trying to explain to
20 them why it is they needed to leave.

21 Q Do you know exactly what time the last warning was given?

22 A I would have to say around 10:50.

23 Q Okay.

24 A Does that sound correct?

25 Q Does that sound about right?

1 A That sounds about right.

2 Q 10:50 is awfully exact. Do you know that for a fact that
3 that would be the last warning?

4 A I do now, yes.

5 Q Okay.

6 A Well, I've had a chance to review the communications
7 tapes, and I believe 10:50 was -- there was a dispersal order
8 given at 10:50.

9 Q Okay.

10 A And that's documented on --

11 Q Do you know if it was -- do you know if it was the last
12 one?

13 A It was not the last one.

14 Q Okay. Do you have -- do you know when -- I mean, if you
15 know, do you know when the last one was?

16 A I can't say exactly, no.

17 Q Okay. At some point after the -- at some point, there
18 was a final dispersal order given?

19 A There was --

20 Q Correct?

21 A Oh, yes, yes.

22 Q And at that point after that final dispersal order was
23 given, do you know what happened next?

24 A There was -- a few minutes were given to see if anybody
25 was going to comply. It became pretty clear that the crowd as

202

1 a whole was not going to comply. Some people, even upon
2 hearing that order, sat down in the street. And at that
3 point, it was decided, all right, everybody here is now under
4 arrest and they're going to be taken into custody.

5 Q Were you able to see the crowd at this point?

6 A Yes, I was.

7 Q So you just described people sitting down in the street?

8 A Yes.

9 Q Did you see that?

10 A I did see that, yes, sir.

11 Q Were you able to -- I mean from -- were you able to hear
12 the people in the crowd?

13 A Yes, I was.

14 Q Okay. Based on what you observed, you know, with your
15 own two eyes and your ears, was it your feeling that the
16 people who were remaining at that point had heard the prior
17 orders of dispersal?

18 A Yes.

19 Q Why did you think that?

20 A Because they were asking us questions, "Why are you
21 giving us an order to disperse?" or they're asking -- they
22 were wanting justification for the order. So that indicated
23 to me that they did in fact hear it.

24 Q They had heard the order. And based on their reaction or
25 their body language or other things they said or did, was it

1 your impression that the people who remained at this point had
2 any intention of leaving?

3 A They had no intention of leaving.

4 Q Why do you think that?

5 A Given the hour and a half opportunity. Again, in the
6 conversations we were having with them, we had several people
7 telling us, "We're not leaving." You know, quote, "We're not
8 leaving." And so I would articulate to them that there would
9 probably be consequences to that.

10 Q Okay. And do you think that they understood that
11 consequences could include arrest?

12 A I would think they did.

13 Q Okay.

14 A Just based on what we were telling them.

15 Q Well, the warnings you give over the PA system suggest
16 that, do they not?

17 A Yeah. It says, "Anybody remaining is subject to arrest."

18 Q Okay. And eventually, so these police lines form and the
19 order is given for the lines to close in; correct?

20 A Yes, sir.

21 Q And does that occur?

22 A It does.

23 Q Okay. And does that happen smoothly?

24 A Fairly smoothly. A lot of moving parts, but it was done
25 pretty efficiently.

1 Q Where were you when those lines were closing in?

2 A I had moved over to the southeast corner of Washington
3 and Tucker. There was a bike crew there. There were also
4 some other commanders there. So I kind of just put myself in
5 a position where I could observe the entire area. Lieutenant
6 Sachs was directing all the movements. So I kind of just sat
7 off to the side and observed.

8 Q Okay. And once those lines had closed in and the
9 intersection was sealed off, what happened next?

10 A When the intersection was sealed off, the individual
11 arrest teams from all the CDT teams came through the lines,
12 and they started effecting arrests. At that point, I walked a
13 little closer. All the people that were being arrested kind
14 of gravitated over to that northeast corner, and that's where
15 they were all amassed, in that kind of one area. So I moved a
16 little bit closer into the intersection where I could better
17 observe the arrests as the arrest teams came in.

18 Q Okay. And did you see anybody -- obviously, you saw a
19 bunch of people arrested; correct?

20 A Yes, I did.

21 Q Did you see anybody resisting arrest?

22 A I did.

23 Q How much of -- how much resisting would you say? How
24 many people were arrested? Do you have any idea?

25 A I believe it was over 100; like 123, I believe it was.

1 Q Okay. And did you see some -- you saw some people
2 resisting?

3 A I did see some isolated incidents of people resisting, a
4 lot of passive resisting.

5 Q What do you mean by "passive resisting"?

6 A Just ignoring commands. As the officers approached,
7 there were a lot of commands for them to lay on the ground,
8 get on the ground, lay on the ground. A lot of people weren't
9 doing that. I saw a couple instances of subjects who had laid
10 on the ground, but they put their arms underneath their body
11 to where you couldn't see their hands, and I would see
12 officers forcibly getting -- they had to force their hands
13 back behind their back. So that kind of thing. Some passive
14 resistance. After a few seconds, I left because as the first
15 arrests were starting to get taken -- I'm sorry -- starting to
16 get taken back to the van, I wanted to ensure that we were
17 getting the proper documentation. So I went behind the line
18 for a few minutes to ensure -- because we have a process where
19 the arresting officer is photographed with the person he
20 arrested. We make sure all the charges are right. So I
21 wanted to make sure that process was happening.

22 Q Okay. So you didn't observe all the arrests?

23 A I didn't observe all the arrests, no.

24 Q But you were there for some of them?

25 A Yes, I was.

1 Q Did you see anybody -- any pepper spray used?

2 A I did see some foggers, what we refer to as the foggers
3 used.

4 Q Tell me what a fogger is.

5 A A fogger is basically -- it's just a high-capacity,
6 long-range. It sprays the same kind of mace that the officers
7 wear in their individual smaller cans. It just shoots
8 farther, and they look like little miniature fire hydrant
9 or -- I'm sorry -- fire extinguishers.

10 Q Okay. And what was the circumstance under which you saw
11 the fogger used?

12 A I saw one subject was refusing to get on the ground. He
13 was getting fogged. I saw another subject who was kind of on
14 his knees but was refusing the orders to lay down flat on the
15 ground. I saw him get fogged, and that was about it.

16 Q Okay. And you're familiar with the department's
17 use-of-force policy?

18 A Yes.

19 Q You're familiar with the specific policy relating to the
20 use of OC spray?

21 A Yes, I am.

22 Q In either of the instances where you saw the fogging
23 occurred -- occur, was it your impression as a supervisor that
24 that was anything inappropriate about that?

25 A No. I felt it was within our guidelines.

1 Q Okay. And describe why in those two instances. You told
2 us about two incidents. Tell us why you felt that.

3 A I feel it was the proper process through the force
4 continuum. Yeah, they were given -- officer presence --
5 obviously, they were there, but they were given -- I heard the
6 verbal commands. They were given the verbal commands very
7 clear to lay on the ground. They weren't ambiguous at all.
8 "Lay down flat on your stomach." And there was noncompliance
9 with those commands. So the next step from verbal commands is
10 pepper spray or Taser.

11 Q Did you see anybody who having already been zip-tied or
12 cuffed or otherwise restrained and laying on the ground in a
13 compliant fashion had spray used against them?

14 A I did not see that, no.

15 Q Would you agree that if spray was used under those
16 circumstances I've just described, meaning someone's
17 compliant, already restrained, and lying on the ground, that
18 pepper spray should not be used?

19 A If they're compliant, that would be inappropriate. I
20 agree with that, yes.

21 Q It's not impossible that someone who's already restrained
22 might be noncompliant in a way that would justify the use of
23 pepper spray?

24 A Oh, absolutely. They could still be kicking. We've had
25 a police officer killed by a handcuffed suspect. So you can

1 certainly resist while you're handcuffed.

2 Q But assuming -- assuming everything else I've said is
3 true and they're also being compliant, they're complying with
4 all of the directives, you would agree that it would be
5 inappropriate under the department's policies to -- to use
6 pepper spray on a person who's not resisting and is already
7 restrained?

8 A I would agree that'd be inappropriate, and I should also
9 state that among the arrests I observed, I observed numerous
10 instances of people who were in full compliance being stood
11 up, walked away. No use of force being used at all. No
12 pepper spray. People who were being completely 100 percent
13 compliant had no issues at all.

14 Q Did you see -- before we leave this topic, did you see
15 anybody under the circumstances I've described where they were
16 fully compliant but yet being sprayed with pepper spray?

17 A No, I did not.

18 Q Okay. And on balance, would you say that most of the
19 people who were arrested that evening -- you say over a
20 hundred; right?

21 A It was over 120, I believe, yes, sir.

22 Q Of this over a hundred, with the caveat, of course, that
23 you've already told us that you didn't see all the arrests,
24 but your general impression based on the arrests that you did
25 see, were most people compliant or most people resisting?

1 A The overwhelming majority was compliant.

2 Q Okay. And those compliant folks -- did you see any of
3 them get pepper sprayed?

4 A No, I did not.

5 MR. RELYS: I have no further questions for this
6 witness at this time. Thank you.

7 THE COURT: Cross-examination.

8 CROSS-EXAMINATION

9 BY MR. ROTHERT:

10 Q Good afternoon, Mr. Rossomanno.

11 A Good afternoon, sir.

12 Q Did you complete a declaration in this case?

13 A I'm sorry?

14 Q Did you sign a declaration in this case?

15 A I did.

16 Q All right. And who wrote that for you?

17 A City Counselors.

18 Q So I'm correctly understanding that some County police
19 have been operating in the city of St. Louis with respect to
20 protests?

21 A Yes, sir.

22 Q Okay. And is that still the case today?

23 A No, it's not.

24 Q Okay. What time period was that?

25 A That portion of the detail where the County was assisting

1 us, that ended a week ago Sunday.

2 Q Do you know who was -- who was in charge of the County
3 police when they were operating in the city?

4 A Lieutenant Colonel Cox.

5 Q And is that someone with the County or someone with the
6 City?

7 A It's a county deputy chief, yes, sir.

8 Q What's your understanding of, in the city of St. Louis,
9 when you have authority to declare an unlawful assembly?

10 A Well, first of all, I don't exercise that without
11 direction from an incident commander.

12 Q Okay.

13 A But I -- you know, any officer, given the -- depending on
14 the circumstances, can declare an assembly unlawful based on
15 his observations and that particular situation.

16 Q Okay. What are the criteria for an unlawful assembly?

17 A My criteria for an unlawful assembly would be when the
18 group as a whole is acting in an unlawful manner, be it
19 committing acts of violence towards citizens or police
20 officers, property damage, or other violations of law, to even
21 include blocking streets.

22 Q So even if there's a peaceful protest that's blocking a
23 street, you believe that can be declared an unlawful assembly
24 in St. Louis under St. Louis laws?

25 A It could be. It very rarely is.

1 Q And who decides if -- if an assembly becomes unlawful?

2 A Normally, the incident commander, which depending on some
3 of our, for lack of a better term, run-of-the-mill protests,
4 that can be a district captain, it can be an area major, or
5 for a larger detail like this, it was a lieutenant colonel.

6 Q But it could be any police officer too?

7 A It could be, but I would -- you'd be hard-pressed to find
8 an officer that would make that call on their own without
9 seeking guidance from above.

10 Q Now, can you give a dispersal order if there's not an
11 unlawful assembly?

12 A Ask that again.

13 Q Can you give a dispersal order to an assembled group of
14 people if there's not an unlawful assembly?

15 A Generally no, we don't do that. I've never done that.

16 Q Could you?

17 A You would have to declare it unlawful first and then give
18 an order to -- sure.

19 Q Okay. So when you talked about the bicycle police
20 officers on 9th and Olive on September 17th giving dispersal
21 orders, was that -- had that been declared an unlawful
22 assembly by the incident commander?

23 A I'm sure it'd been declared that by the officers on the
24 scene based on the property damage. I would assume. You'd
25 have to ask them.

1 Q So it's not always the incident commander. Sometimes
2 it's just the officers --

3 A Not always.

4 Q -- on the scene?

5 A Correct.

6 Q Also, that evening or that day, September 17th, you
7 shadowed a march for quite some time in streets in St. Louis;
8 correct?

9 A 17th -- was that Sunday?

10 Q Yes.

11 A Yes, yes, I did. I'm sorry.

12 Q All right. Is it your belief that you could have
13 arrested any of the people at any time who were participating
14 in that march?

15 A It's my belief that blocking the streets is against the
16 city ordinance.

17 Q Okay. So do you believe that under the city ordinances
18 you had authority to arrest any of those people at any time?

19 A If we wanted to, we could have effected arrests after,
20 you know, going through the proper procedures of telling them
21 that their activity is unlawful and they need to leave the
22 streets.

23 Q Well, do you really? Do you really have to tell someone
24 that they're -- if they're violating the law about blocking
25 streets, do you have to tell them that it's unlawful and --

1 A You'd be surprised how many times we've had to explain to
2 them that blocking the streets is unlawful.

3 Q Okay. Before you can do an arrest, do you have to
4 declare the assembly unlawful and order them to leave if
5 they're blocking the streets, or can you just arrest?

6 A Oh, not necessarily. If you have somebody -- for
7 example, you see a subject throw a rock at a police officer;
8 you don't have to give him an order to disperse before you
9 arrest him. He's wanted for a charge at that point.

10 Q But what about blocking traffic by marching in the
11 street?

12 A Do you have to give them?

13 Q Right.

14 A No, you don't, but we do. Of the 200 protests I've
15 worked, 90 percent of them, we've allowed them to march in the
16 streets, and we do nothing but block traffic for them.

17 Q Okay. And how do you decide when you're going to --

18 A That's not my decision.

19 Q Okay. Whose decision is it?

20 A The incident commander normally.

21 Q All right. And is that just in his discretion?

22 A You'd have to ask the incident commander.

23 Q Okay. And who is the incident commander?

24 A For this, for these details, for the Stockley verdict, it
25 was Lieutenant Colonel Leyshock, but as I said, day-to-day,

1 the incident commander can change depending on where the
2 protest is and who is the district captain.

3 Q All right. If there are protests in the downtown area,
4 marching down Market during the day, do you know who the
5 incident commander is?

6 A Captain Renee Kriesmann would be the incident commander.

7 THE COURT: What was the name you said?

8 THE WITNESS: Kriesmann, ma'am. It's
9 K-R-I-E-S-M-A-N-N.

10 Q (By Mr. Rothert) Now I want to ask you a couple questions
11 about dispersal orders.

12 A Okay.

13 Q Do you think it's reasonable that people might think that
14 when you give a dispersal order to a group of protestors that
15 you're ordering the protest to disperse and not people who
16 aren't involved in the protest?

17 A I'm sorry. I'm trying to -- because I can't really hear
18 you very good. I apologize. My hearing is -- I'm trying to
19 read it as you're --

20 Q That's fine. If -- when you give a dispersal order to a
21 group of protestors, do you think it's reasonable for people
22 who are not part of that assembly to think that that dispersal
23 order does not apply to them?

24 A I think a reasonable person would order or would follow
25 the orders being given to them by police, whether they're

1 actively protesting or not. I think when the police say it's
2 time to leave the area, I think a reasonable person would go
3 ahead and follow that order.

4 Q And, you know, when you -- when you were walking down the
5 street that night, that's what you were saying -- "Time to
6 go" -- right? I mean there's -- you were saying, "Time to
7 go"?

8 A I was saying a wide variety of things.

9 Q All right.

10 A The verbatim dispersal order, the standard order, was
11 given numerous times, and then we reinforced that order by
12 going individually to each group, explaining to them what that
13 order meant and that it was time to leave.

14 Q Okay. And who -- who did you explain that to? Can you
15 identify any individual that you explained that to personally?

16 A Sure. Some of them are sitting in the room right now.

17 Q Okay.

18 A Alicia Street, Keith Rose, Tony Rice, and a lot of other
19 people that I know by face but not necessarily by name.

20 Q When you give a dispersal order, where do you intend
21 people to -- I know you want -- you would like people to leave
22 and go home; right?

23 A They'd leave the area, leave the immediate area. Sure.

24 Q What does "leave the area" mean to you?

25 A That's situational dependent. You know, we don't have a

1 blanket, "You must leave this four-block, four-square-block
2 radius." You know, it just depends on the situation, where we
3 are, the terrain. But, essentially, again, as I mentioned
4 earlier, our goal isn't to relocate the problem. Our goal is
5 to disperse the problem. So for the lack of a better
6 description, we want them to get in their cars and go home.

7 Q And, you know, what if they are home? Let's take
8 September 17th. People live on Washington --

9 A They should have went inside.

10 Q -- who you caused to arrest.

11 A They should have went inside.

12 Q They should have gone -- okay. And how are people
13 supposed to know how far away is far enough away when you say,
14 "Disperse"?

15 A I would think, again, a reasonable person being given
16 that order from the police -- you know, common sense has to
17 kick in at some point where you decide, "Hey, I just -- I need
18 to leave this area," and if it's not far enough away, you'll
19 be given further direction.

20 Q All right. So if you're not given further direction, is
21 it fair to assume you've gone far enough?

22 A If the situation dictates. It all depends on where we
23 are and what we're doing.

24 Q And how long -- you don't want people to assemble again
25 after a dispersal order. How long do you want them not to

1 assemble?

217

2 A There's no set timetable.

3 Q Well, how long do you think you can arrest them for
4 failure to disperse if they have reassembled?

5 A Again, it's kind of a reasonable standard. If you leave
6 and turn around and come back 10 minutes later and start
7 engaging in unlawful activity again, you're probably going to
8 have some issues. But there's no -- it's not a standard part
9 of our order where we say, "You are ordered to disperse, and
10 you have to stay away for two hours." You know, that's not
11 something we do. It's --

12 Q So who decides whether it's -- you know, it's been too
13 long since the dispersal order?

14 A It's never really been an issue.

15 Q Well, it's not an issue for you because you're the one
16 enforcing it and arresting people, but could you see how it
17 could be an issue for someone who feels like they've left the
18 immediate vicinity of where the situation was and reassembled
19 somewhere else? Can you understand how that would be --

20 A Again, I think a reasonable person would understand the
21 circumstances and, if they're told to leave by the police,
22 they would leave and just stay away.

23 Q Now, you were talking about the bus situation at Clark
24 and Tucker on the 15th of September. Do you remember that?

25 A Yes, sir.

1 Q All right. And you understand -- have you talked to
2 anyone else about any of the testimony that was given
3 yesterday or today in this case?

4 A No, I have not.

5 Q All right. If I -- if there's a factual dispute between
6 what you have said and other people have said about what
7 occurred, do you know -- could we do anything to resolve that
8 factual dispute other than deciding who's telling -- anything
9 that could help us in telling who's telling the truth?

10 A It'd be --

11 MR. RELYS: Objection. Vague. The question is
12 vague.

13 THE COURT: Yeah. Sustained.

14 Q (By Mr. Rothert) Okay. The City has cameras at Clark and
15 Tucker that record 24 hours a day, seven days a week; correct?

16 A I believe so, yes.

17 Q All right. And so there is video of what happened that
18 day?

19 A I would assume.

20 Q Okay. And have you viewed the video of what happened
21 that day?

22 A I have not seen any video from the 15th. No, sir.

23 Q And did you bring it? You don't have it with you by any
24 chance?

25 A No.

1 Q All right. There are also cameras recording at McPherson
2 and Euclid, aren't there, in the city?

3 A Okay. I don't know exactly, but that wouldn't surprise
4 me. We had one of our documentation teams there. I know
5 that.

6 Q Oh, you did. And did -- did -- have you viewed the video
7 from your documentation team that was there?

8 A I have not.

9 Q Okay. So do you know if it shows any of the things that
10 you've testified about?

11 A If there's video of it, I imagine it shows it because
12 that's an accurate account of what happened.

13 Q Okay. Is there a reason why you didn't bring that video
14 with you?

15 A I don't have custody of that video.

16 Q Okay. Who would have custody of that video?

17 A I would imagine it's part of the police report.

18 Q Back to the -- to the -- during the day of
19 September 15th, you testified that no chemical munitions were
20 used downtown on the 15th at protests; is that correct?

21 A That's correct. There was some mace deployed. I know
22 that. But nothing beyond that.

23 Q Okay. And can you tell me what's the difference between
24 mace and chemical munitions?

25 A To me, chemical munitions is the OC and the CS mainly

1 that our SWAT team has. Pepper spray. I would classify those
2 as two separate things.

3 Q All right. Are they the same chemical as a chemical
4 munition?

5 A Not necessarily, no. OC and CS are two different -- two
6 different things.

7 THE COURT: Well, is OC the same thing as mace?

8 THE WITNESS: It is. It's just a different
9 concentration between what the SWAT team has compared to what
10 the normal officer carries.

11 Q (By Mr. Rothert) And the SWAT team carries foggers?

12 A I don't know. I imagine some of them do, yes.

13 Q I want to show you, on the screen next to you, the third
14 page of Exhibit D to Plaintiffs' motion for preliminary
15 injunction, which was filed in this case. It's Document 11-4,
16 page 3. Can you see?

17 THE COURT: Can you see that on the --

18 A I can see it, yes. I just can barely hear you. I can
19 see that fine, though.

20 Q (By Mr. Rothert) Okay. Sorry. Can you tell me -- can
21 you tell where the location of this picture is?

22 A That would look to be looking south on Tucker, just north
23 of Clark, if I -- yeah, south on Tucker, north of -- you're
24 looking south on Tucker, just north of Clark.

25 Q Okay. And can you tell what's happening in that picture?

1 A It looks like we have a CDT line formed with some
2 protestors to the north of them.

3 Q Anything else?

4 A Well, it's a grainy picture.

5 Q Yes.

6 A It looks like there could be foggers being used, but I
7 can't testify that they are because that's not the highest
8 quality picture I'm looking at.

9 Q As far as chemical munitions, are there any policies that
10 you follow before you use chemical munitions?

11 A Yes.

12 Q And what are those?

13 A Chemical munitions -- really, they can't be used really
14 as a crowd control item. They can't be used for a dispersal.
15 They're more used as -- to gain compliance. In a perfect
16 world, we could effect arrests on everybody that we use
17 chemical munitions on, but sometimes that's just not feasible.

18 Q Okay. Do you give any warnings before you use chemical
19 munitions?

20 A When we can, yes, and absent exigent circumstances, we do
21 give a warning.

22 Q Okay. Now, you would consider someone throwing things at
23 the police to be exigent circumstances?

24 A Yes, I would.

25 Q So if someone is throwing something at the police, no

1 warnings are necessary?

2 A Correct.

3 Q Turning to the 17th, evening of the 17th, that Sunday --

4 A Okay.

5 Q -- the last dispersal order you gave was at 10:50;
6 correct?

7 A I can't say that that was the last one or not. There was
8 one given at 10:50, but I don't believe that was the last one.
9 I believe I continued to give them.

10 Q It's the last one you gave?

11 A No. Again, there was one given at 10:50, but I'm pretty
12 sure I gave -- continued to give them after that.

13 Q Okay. Do you think that -- if you continued to give
14 dispersal orders after 10:50, do you think you would have
15 included that in your declaration?

16 A Not necessarily.

17 Q You did include the one at 10:50, didn't you?

18 A I did.

19 Q And you did include the one at 8:51; correct?

20 A Yeah, but it's fair that it should be -- it's fair to say
21 that there were several dozen dispersal orders given
22 throughout that entire time frame.

23 Q All right. And so --

24 A So I can't sit here and say that was the last one.

25 Q Okay. So do you know -- several dozen given by you?

223

1 A Correct.

2 Q All right. When was the last time, the latest period
3 you're aware of any violent or property damage activity in the
4 city of St. Louis, downtown, Sunday, September 17th?

5 A I can't give you an exact time, but I can say between the
6 last known act of violence that I know of --

7 Q Yes.

8 A -- and the time the arrests were made, there's -- some
9 time passed -- probably an hour and a half, two hours.

10 Q Do you believe that the act of violence that had happened
11 an hour and a half or an hour before you declared an unlawful
12 assembly and ordered people to disperse -- do you think that
13 justifies -- is that sufficient justification for you to order
14 a dispersal of an assembly?

15 A That along with my reasonable belief that had that group
16 been allowed to stay downtown there would have been further
17 acts of violence or property damage, I should say.

18 Q Now, I understand when you give a dispersal order you
19 would like everyone to leave who's in the vicinity, but you
20 understand that you don't have authority to order dispersal of
21 people who aren't a part of the assembly; right?

22 A That's not my understanding, no.

23 Q No? Where do you get your understanding of who you can
24 order to disperse?

25 A The order applies to everybody in that immediate area.

1 Q And where -- what do you base that on?

2 A Based on just my observations of -- and, you know, the
3 situation dictates that as well -- you know, where are we, how
4 many people are there. I'm not sure I'm tracking what your
5 question is.

6 Q On the ELMO, can you see that?

7 THE COURT: You need to make it much bigger.

8 Q (By Mr. Rothert) Yeah. I'll zoom in here. Do you
9 recognize this definition of an unlawful assembly from
10 St. Louis City ordinances?

11 A I've seen it before, yeah.

12 Q Okay. And reading this, do you believe -- well, what do
13 you think is required before you can declare an unlawful
14 assembly? Do you think there has to be force and violence?

15 MR. RELYS: Legal conclusion.

16 THE COURT: Overruled.

17 A Do I believe there has to be violence involved? Is that
18 what you're asking me?

19 Q (By Mr. Rothert) Force or violence, yes.

20 A No. There are different -- there are types of unlawful
21 assembly that can involve blocking of highways, blocking of
22 streets that don't necessarily involve violence.

23 Q Okay. Now, I'm just reading here. Can you read along
24 with me? It says, "Any two persons who shall in the city
25 assemble together or being assembled shall act in concert to

225

1 do any unlawful act with force or violence." Do you -- do
2 you --

3 A It also says "or against the peace of others" if you go
4 down to the next line.

5 Q Okay. So you don't believe that force or violence is
6 required under this ordinance? That's not how it's applied?
7 That's not how you enforce it?

8 MR. RELYS: Same objection, Judge. And I'd ask that
9 it be made continuing.

10 THE COURT: Overruled. It's a continuing objection.

11 MR. RELYS: Thank you.

12 A Can you ask the question again?

13 Q (By Mr. Rothert) The way it's enforced in the city of
14 St. Louis, this language here, "with force or violence" is not
15 mandatory; that's optional with all the other things; correct?

16 A I'm not sure I understand what you're asking. Can you
17 maybe rephrase it?

18 Q Okay. I'm asking you is -- if it doesn't say -- if
19 there's no unlawful act with force or violence, can it be an
20 unlawful assembly?

21 A Possibly, yes, it can is my understanding.

22 Q And that's how it's enforced by you and others in the
23 city?

24 A Say it again. I'm really having trouble hearing you.

25 Q That is how you enforce it? That's how you enforce it in

1 the city?

2 A Not always, no. Again, I've testified earlier that
3 there's 200 protests I've worked where they march in the
4 street and we did not declare the assembly unlawful at all.

5 Q You mentioned you were present when folks were being
6 arrested after being boxed in on four sides in the Washington
7 and Tucker area?

8 A Are you talking about Sunday evening?

9 Q Right, Sunday, September 17th.

10 A Yes, I was. Yes.

11 Q And how many people were in that area prior to the --
12 prior to the boxing in, how many people were in the vicinity?

13 A Well over a hundred.

14 Q How many were arrested?

15 A I believe it was over like a hundred and -- over 120. I
16 want to say 123. I'm not really sure of the exact number.

17 Q Now, at 10:40, there were only 50 to 100 people there,
18 isn't that right, in the intersection?

19 A Are you testifying to that?

20 Q I'm asking you if that's correct.

21 A No. There was well over 100 people in that immediate
22 area.

23 Q At 10:40?

24 A I would say so, yes.

25 Q Okay. You did file a declaration in this case; right?

1 A Say that again.

2 Q You filed a declaration in this case? You completed it?

3 A Yes.

4 Q And you were under oath when you did that?

5 A Yeah.

6 Q You understood you were under oath?

7 A Yes.

8 Q Okay. You didn't write it?

9 A No, I didn't.

10 Q All right. But you read it?

11 A I did read it.

12 Q And you understood that you had to be telling the truth?

13 A Correct.

14 Q All right. And isn't it true that in your declaration
15 you state that at approximately 10:50 -- sorry -- I'll
16 restart. In your declaration, you state that at 10:40 p.m., a
17 group of about 50 to 100 protestors gathered at the
18 intersections of Tucker and Locust and Tucker and Washington,
19 standing on all corners and in the street?

20 A Yes. There were also people strown out on Tucker, on the
21 west side. They weren't at that intersection, but they were
22 still around.

23 Q Okay. So how far away were they?

24 A Within two blocks.

25 Q And how many of them were there?

1 A A few dozen probably.

2 Q All right. So how many people were actually at the
3 intersection -- 50 or 100?

4 A Probably closer to 100.

5 Q Now, in your declaration, you say that those 50 to 100
6 people were physically obstructing the movement of vehicular
7 traffic. Is that true?

8 A As I said, several people were sitting in the street and
9 standing in the street, yes, sir.

10 Q Okay. And were they obstructing vehicular traffic?

11 A There was still traffic coming through that area. Yes.

12 Q Okay. I understand there was no traffic coming through
13 the area. Was it because they were sitting in the street, or
14 was there no traffic?

15 A Cars had to go around them to avoid them, yes.

16 THE COURT: Yeah. Because he said there was still
17 traffic coming through the area.

18 Q (By Mr. Rothert) Oh, still. Okay.

19 A Yes.

20 Q Okay. So there was still traffic. I thought he said no.
21 Sorry.

22 A No. I'm sorry. There was still traffic coming through.

23 Q But no pedestrian traffic was obstructed?

24 A I can't say yes or no to that.

25 Q You were nearby when the arrests were effectuated at that

1 intersection?

2 A I was nearby, yes.

3 Q And you testified that the commands were very clear and
4 unambiguous to lie down on the ground. Is that correct?

5 A I heard officers giving those orders, yes, sir.

6 Q Did you also hear officers saying, "Sit down"?

7 A Not that I recall, no.

8 Q "Get down"?

9 A "Get down," I probably heard, yes, sir.

10 Q Okay. Is "Get down" ambiguous? Does that mean lay down
11 on the ground to you or --

12 A To me, I would -- I would -- I hate to phrase it this
13 way; I would get down as much as I could, which would be to
14 lay down.

15 Q All right. And if there were commands to sit down, do
16 you think that people might reasonably think that that's what
17 they're supposed to do?

18 A I didn't hear those commands, but I would expect that
19 people would -- some people would follow those commands.

20 Q Now, when he was being arrested that evening, was Luther
21 Hall fully compliant?

22 A I don't know anything about that incident.

23 Q What incident don't you know about?

24 A Anything involving Luther Hall.

25 Q Okay. Do you understand that he was part of the crowd

1 that was arrested that evening?

2 A He was not arrested at Washington and Tucker.

3 Q He was caught in the four corners; is that correct?

4 A No, that's not correct, to my knowledge, but I have no
5 firsthand knowledge of that incident, so I can't really say.

6 Q Well, I mean you've testified about a ton of things you
7 have no firsthand knowledge of that happened downtown that
8 night. You don't know anything about what happened to him?

9 A I know he was not taken into custody at Washington and
10 Tucker. I do know that.

11 Q Okay. Well, what did happen?

12 A I don't know. I wasn't there.

13 Q Again, though, you've testified about a lot of things
14 that you weren't there for, so what do you know?

15 MR. RELYS: Object to the relevance of this.

16 THE COURT: Overruled.

17 A I -- I -- with all due respect, I'm not going to sit here
18 and testify to something I didn't witness. I don't think
19 that's appropriate.

20 THE COURT: But somehow you know he was not arrested
21 at Washington and Tucker; right? How do you know that?

22 THE WITNESS: Because I had heard that there was an
23 incident involving him long before the arrests at Washington
24 and Tucker were made.

25 Q (By Mr. Rothert) And what incident? What do you know

1 about this incident?

2 A Say again. I'm sorry.

3 Q What do you know about this incident that you've heard?

4 A That he was working undercover and he was mistaken for a
5 protestor and taken into custody. That's about the extent of
6 what I know.

7 Q And also beaten up; correct?

8 A I wouldn't have any knowledge of that.

9 Q So it's your testimony that you really have no knowledge
10 of that?

11 A No firsthand direct knowledge. Hearsay is all I know.

12 Q Okay. What hearsay do you know?

13 A I heard that there was some sort of resisting involved.
14 That's all I know.

15 Q Now, it's your view, isn't it, that you get to decide
16 when a protest is over?

17 A No, that is not my decision, no.

18 Q And it's your view that you have that authority as a
19 police officer in St. Louis?

20 A Oh, could I?

21 Q Yes.

22 A I could, but I don't.

23 Q Okay. And it's also your view that when you give a
24 dispersal order or when you're ready for a protest to end,
25 that you can run it completely out of the city; correct?

1 A No, that's not accurate.

2 Q Okay. And I mean you've even commented, haven't you,
3 that you could run it to Alton; you could run a protest to
4 Alton if you wanted to?

5 A Say that again. I'm sorry. I'm really having a very
6 hard time --

7 Q Okay. You've stated, have you not, that if you want to
8 you could run a protest all the way to Alton?

9 A All the way to where?

10 Q Alton.

11 A No, I didn't testify to that.

12 Q I'm not saying you testified to it, but you have stated
13 that?

14 A Not that I recall, no.

15 Q All right. Do you know where Alton is?

16 A Do I know where Alton is?

17 Q Yes.

18 A Alton, Illinois?

19 Q That's the one.

20 A Yes.

21 Q All right. You don't recall saying anything like that on
22 September 17th?

23 A I don't recall that, no.

24 Q Do you recall talking to Aaron Banks on September 17th?

25 A I don't know if I know -- I may know his face, but I

1 don't know who Aaron Banks is by name.

2 Q Okay. Do you think that when you -- when you began
3 making dispersal orders repeatedly for hours and people have
4 separated, moved around, not stayed in the exact same place
5 but moved around a little bit but no one's been arrested and
6 no one's continued to tell them to leave, do you think that
7 people might think that it's okay for them to assemble on a
8 street or sidewalk in the area?

9 A Well, I would have a problem with the portion of that
10 question where you said no one's continued to tell them to
11 leave because that wasn't the case here.

12 Q Well, let me ask you this way. If you tell people to
13 leave, is it reasonable for them to assume that they have gone
14 far enough away for a long enough time if you haven't pushed
15 them back farther?

16 A That's -- again, I'm having trouble tracking your
17 questions, but I would say that if the orders were not
18 continuous, I guess it's reasonable that they may think
19 they're no longer in place, but that was certainly not the
20 case here.

21 Q And when you say "here," when do you mean?

22 A I assume we're still talking about Sunday evening at
23 Washington and Tucker.

24 Q Okay. No dispersal order was given at McPherson and
25 Euclid; correct?

1 A There was, yes.

2 Q Okay. What time was that given?

3 A I couldn't tell you an exact time.

4 Q Okay. Can you give me an approximate time?

5 A We're going back to what day now?

6 Q The 15th.

7 A I would say approximately -- I'm going to ballpark. I'm
8 going to give myself a wide window here. I would say
9 somewhere around 9:00, 10:00 to 11:00, somewhere in that time
10 range.

11 Q And you would expect that to be on the video that you
12 took?

13 A I didn't take video.

14 Q Or that the police department took?

15 A I can't tell you if it's on that video or not. I haven't
16 seen it.

17 Q Would you expect it to be on the video?

18 A I would expect it to be. But, again, that group had been
19 given dispersal orders continuously since Kingshighway and
20 Hortense.

21 Q Well, let me ask you. There were people sitting at the
22 restaurant across the street from you at tables; correct?

23 A I don't remember anybody sitting at tables, no.

24 Q Okay. Were there people standing on the corners?

25 A There were.

1 Q Okay. Do you think that they were ordered to disperse?

2 A We asked them to step back inside.

3 Q Did you ask them -- so how is that different? What's the
4 difference between an order and -- and --

5 A Well, those people weren't throwing rocks.

6 Q I know. I'm just asking what's the difference coming out
7 of your mouth between an order to disperse and a "Hey, would
8 you mind moving inside?"

9 A The situation would be the difference.

10 Q Okay. So --

11 A But it's our desire for everybody to leave that
12 intersection.

13 Q Okay. So how did you communicate that to the people who
14 were standing on the corners?

15 A I actually had multiple conversations with individuals
16 who had walked up to us, and I told them, "You need to leave
17 the area."

18 Q Okay. What about the other side of -- the other side of
19 McPherson? Like at McPherson -- well, McPherson and Euclid,
20 the northeast corner and the northwest corner -- how did you
21 communicate to those folks?

22 A I didn't communicate with anybody on the east side.

23 Q You mentioned the thing you didn't throw very well that
24 landed kind of in the middle of the street, the smoke. Was
25 that smoke?

1 A Yes. It was inert smoke.

2 Q Okay. And is that a chemical munition?

3 A Not technically. It's inert.

4 Q Okay. So what does that mean?

5 A It means there's no chemical compound to it. There's no
6 irritant. It's just -- it's white smoke.

7 Q All right. And that wound up -- you wound up throwing
8 that at pedestrians?

9 A I threw it up the street towards the protestors that were
10 throwing rocks to the west.

11 Q All right. And you were pretty unhappy when that got
12 thrown back?

13 A I don't know if "unhappy" is the word I would use. It
14 was -- it made me want to take that person into custody.

15 Q Okay. Why?

16 A That's an assault.

17 Q Was it an assault when you were throwing it at
18 pedestrians who were on the sidewalk?

19 A It wasn't thrown at pedestrians on the sidewalk.

20 Q But was it closer to the pedestrians on the sidewalk or
21 to the people you were aiming for?

22 A It was -- I'd split the difference. It was in the street
23 to the north of the restaurant.

24 Q Okay. You understand north at that intersection would
25 mean toward Delmar; correct?

1 A Delmar is to the north, yes.

2 Q Yeah. All right. And, actually, I think you testified
3 that that was thrown and then some -- some pepper pellets were
4 shot. Is that correct?

5 A A SWAT officer fired some PepperBall.

6 Q Okay. And those actually came before the inert gas,
7 didn't they?

8 A I don't recall.

9 Q And those were fired, at least one of them, directly at
10 the people standing on the corner, the northeast corner?

11 A I don't recall.

12 Q Well, you were there though?

13 A I know PepperBalls were fired at the subject that threw
14 the gas or the smoke canister back at us.

15 Q Okay. Now, that smoke canister -- so he had to go
16 onto -- since it was north, north of the intersection, he had
17 to go onto Euclid to get that?

18 A He had to come out towards the street to get it.

19 Q Okay. He had to come which way? Which street?

20 A Onto Euclid.

21 Q All right.

22 A That's where he threw it at us from. He kind of threw it
23 from the -- I would say near the northeast corner of Euclid
24 and McPherson.

25 Q Okay. But it never went outside -- it didn't go past the

1 intersection on --

238

2 A It might not have.

3 MR. ROTHERT: That's fine. We don't need it.

4 Q (By Mr. Rothert) Do you have any side businesses?

5 A I do.

6 Q Okay. What are they?

7 A Just one. A training company.

8 Q What's it called?

9 A It's called 0311.

10 MR. RELYS: Object to the relevance of this question.

11 THE COURT: Overruled.

12 A 0311 Tactical Solutions.

13 THE COURT: Did you say this was a trading company or
14 a training company?

15 THE WITNESS: Training and consulting, yes.

16 THE COURT: Training and consulting?

17 THE WITNESS: Yes, ma'am.

18 THE COURT: Okay. Thank you.

19 Q (By Mr. Rothert) Now, is that -- is it 031 or 311 or is
20 it 0311?

21 A 0311.

22 Q 0311. Okay. And what does that refer to -- 0311?

23 A That is a designation for a Marine Corps MOS, Military
24 Occupational Specialty. Every job in the Marine Corps has a
25 four-digit number assigned to it, and that happened to be mine

1 while I was in the Marines.

2 Q And what kind of training do you offer?

3 A The bulk of it is active shooter response, active shooter
4 preparation. We also do firearms training.

5 Q Okay. Anything else?

6 A In the past, we have done civil disobedience training.

7 We've gone to schools and businesses, and we talk to staff at
8 businesses and faculties at school about preparing for armed
9 intruders, that sort of thing.

10 Q When you say civil disobedience, what is that to you?

11 A In terms of what we train?

12 Q Well, what do you mean by civil disobedience?

13 A I should say civil disobedience response --

14 Q Okay.

15 A -- is something that we have done in the past.

16 Q Okay. And when you say you train people to respond to
17 civil disobedience, what is civil disobedience to you?

18 A We've actually only had one client in that area. It was
19 the Fort Wayne Police Department, and we talked to them about
20 just the different formations, what they look like, how
21 they're used. We do cover for the First Amendment rights and
22 how to protect those rights and how they relate to civil
23 disobedience.

24 Q And what is civil disobedience?

25 A It's kind of a wide -- wide-ranging thing, anything from

1 civil unrest to marches, demonstrations.

2 Q Do you have any nicknames?

3 A Any what? I'm sorry.

4 Q Nicknames.

5 A Do I have any nicknames?

6 Q Yeah, nicknames.

7 A Not really, no.

8 Q Okay. Do you have any nicknames that you use in the
9 advertising for 0311 --

10 A No.

11 Q -- Tactical. Okay. In your ads -- you do some
12 advertising on Facebook and Twitter; is that correct?

13 A We have accounts, yes.

14 Q All right. And who manages those?

15 A I do.

16 Q All right. And so sometimes you put #riotking; right?

17 A I wouldn't say sometimes. Once.

18 Q Okay. So you have done that?

19 A I have done it, yeah.

20 Q What does that mean?

21 A That was a hashtag created by the protestors, and that's
22 how they refer to me on occasion.

23 Q And how did you get -- what do you take that name to
24 mean?

25 A You'd have to ask them. I didn't come up with it.

1 Q Okay. Why do you include it on your advertising for your
2 business?

3 A It wasn't really an advertisement, first of all. It was
4 just a general post.

5 Q Okay.

6 A And it was just kind of a tongue-in-cheek reference to
7 the false narrative of how I control everything that happens
8 at these protests.

9 Q Speaking of that, you're not always in charge when
10 there's a large protest in the city of St. Louis, are you?

11 A No, no, I'm not.

12 Q And sometimes it's Mr. Jemerson; correct?

13 A First of all, no, we're never in charge. We're never the
14 incident commander of a protest.

15 Q Okay. Well, what are you?

16 A We're the coordinators who -- we assist and handle --
17 really, you know, the incident commander decides he or she
18 wants this done; we assist them in getting it done.

19 Q Okay. So you're not really the person who's making the
20 decisions?

21 A Absolutely not.

22 Q Just kind of a facilitator?

23 A Correct.

24 Q All right. Mr. Jemerson does that also?

25 A He's the -- holds the same position as I do, yes.

242

1 Q Are there other people in the St. Louis Metropolitan
2 Police Department who -- who hold that position and handle,
3 you know, larger protests?

4 A No. It's mainly myself and Sergeant Jemerson hold the --
5 it doesn't even really have an official job title, but I would
6 just say the CDT coordinator position.

7 Q You mentioned that the Washington egress was open on
8 September 17th for quite some time?

9 A Correct.

10 Q Was that the last one to close?

11 A Correct.

12 Q And there's documentation of that? You mentioned
13 documentation.

14 A Yeah, I would assume. Yeah, there is. I'm sure it's
15 documented in the police report, but it's also documented on
16 even some of the live-streams that I saw.

17 Q Do you have any of that documentation with you?

18 A I do not.

19 Q Okay. Do you know that there is a police report about
20 this incident?

21 A Yes.

22 Q And you've seen it?

23 A I have not seen it. I did not write it.

24 Q Okay. But you know it exists?

25 A There is a police report, yes.

243

1 Q Do you know if there's been any charges filed against
2 anyone who was arrested on September 17th at the intersection,
3 the Washington-Tucker or four corners or four lines you
4 referred to?

5 A Yeah. There were people booked. So I would assume
6 charges were applied on. I don't know what the disposition of
7 that was.

8 Q You don't know?

9 A I do not know.

10 MR. ROTHERT: I have no further questions.

11 THE COURT: Redirect.

12 MR. RELYS: Yes, Your Honor.

13 REDIRECT EXAMINATION

14 BY MR. RELYS:

15 Q Sergeant, you were asked --

16 THE COURT: Can you move that mike closer to you?

17 THE WITNESS: Yeah, please.

18 THE COURT: He has trouble hearing.

19 THE WITNESS: Thank you.

20 Q (By Mr. Relys) You were asked several questions about
21 your declaration.

22 A Yes.

23 Q And I think you said -- you told us earlier that you
24 didn't draft of the declaration yourself.

25 A No, I did not.

1 Q You signed it; right?

2 A Correct.

3 Q But you didn't draft it?

4 A No, I did not.

5 Q Who drafted it?

6 A The City Counselor's name escapes me right now. I'm
7 sorry.

8 Q Someone in the office I work for; correct?

9 A Correct.

10 Q All right. And was that declaration -- you didn't make
11 decisions as to what to include or not include in that
12 declaration?

13 A Correct.

14 Q You just read it and made sure it was accurate?

15 A Right.

16 Q And signed it?

17 A Yes, sir.

18 Q Okay. And I'm going to show you a copy of that
19 declaration now, and I'm going to show you it's -- this was
20 Exhibit I to Defendant's memorandum in response to Plaintiffs'
21 motion for preliminary injunction, Docket #33-6, and it's a
22 six-page document. I'm going to sort of go through the pages
23 here.

24 A Okay.

25 Q Just take a look. And here on the sixth page, does that

245

1 appear to be your signature at the bottom?

2 A Yes, it is.

3 Q Okay. And at the time you read and signed this, did it
4 appear to be an accurate account of -- contain accurate
5 information that you were signing to?

6 A At the time, yes, sir.

7 MR. RELYS: Okay. Judge, at this time, I would move
8 for admission of Defendant's Exhibit I.

9 THE COURT: Defendant's Exhibit I is received into
10 evidence.

11 MR. RELYS: Thank you, Your Honor.

12 Q (By Mr. Relys) You've mentioned a couple different times,
13 Sergeant, that you've been involved in 200 or more -- the
14 police response to 200 or more protests.

15 A Yes, sir.

16 Q Over what sort of time period are we talking?

17 A I would say since November of 2014.

18 Q So since -- that would be Ferguson?

19 A The grand jury decision came out in the Ferguson case.

20 Q Okay. So since -- so in the intervening years since the
21 night of the grand jury decision in the Ferguson matter, you
22 think you've been involved in the police response to upwards
23 of 200 protests?

24 A At least 200.

25 Q Okay. And, obviously, we've talked about a couple

246

1 protests that you were involved in in the last month or so
2 involving -- you know, that sort of come in the wake of the
3 Jason Stockley verdict; right?

4 A Yes, sir.

5 Q Okay. And, obviously, we've talked about the fact that
6 there were arrests, in some cases numerous arrests, made in
7 response or, you know, in relation to some of these protests
8 that have occurred recently in the city.

9 A Correct.

10 Q Okay. Of the 200 or so protests that you feel like
11 you've -- that you've been involved in in the last several
12 years, how many do you think -- I'm just asking for an
13 estimate if you can. How many of those protests do you think
14 involved arrests?

15 A I'd be surprised if you told me it was 20. So I'd say
16 less than 10 percent.

17 Q So less than -- to the best of your knowledge, less than
18 10 percent of the protests that you help respond to result in
19 arrests?

20 A Correct.

21 Q All right. And you were asked a couple -- a couple
22 questions about this smoke canister that you threw. Was it
23 the smoke canister you threw at McPherson and Euclid?

24 A Yes, sir.

25 Q And there were some questions about the exact location of

1 that smoke canister.

2 A Yes.

3 Q And I think you told us earlier that it maybe wasn't your
4 best throw you've ever made.

5 A No.

6 Q Okay. Just could you tell us again what you meant by
7 that?

8 A It didn't go near as far as I wanted it to.

9 Q Okay. You wanted -- where did you intend it to go?

10 A I would like to have gotten closer to the protestors who
11 were north, throwing the rocks.

12 Q All right.

13 A But it kind of came out of my hand in a way that I wasn't
14 really happy with.

15 MR. RELYS: Fair enough.

16 I have no further questions at this time.

17 THE COURT: Any recross?

18 MR. ROTHERT: No.

19 THE COURT: All right. You may step down.

20 THE WITNESS: Thank you, Your Honor.

21 THE COURT: I'd like to talk to counsel in chambers
22 about scheduling. So we'll be in temporary recess.

23 (Court recessed from 5:17 p.m. until 5:30 p.m., after
24 which the Deputy Clerk announced court was adjourned until
25 October 23, 2017, at 8:30 a.m.)

CERTIFICATE

I, Gayle D. Madden, Registered Diplomate Reporter and Certified Realtime Reporter, hereby certify that I am a duly appointed Official Court Reporter of the United States District Court for the Eastern District of Missouri.

I further certify that the foregoing is a true and accurate transcript of the proceedings held in the above-entitled case and that said transcript is a true and correct transcription of my stenographic notes.

I further certify that this transcript contains pages 1 through 247 inclusive.

Dated at St. Louis, Missouri, this 19th day of November, 2017.

/s/ Gayle D. Madden

GAYLE D. MADDEN, CSR, RDR, CRR

Official Court Reporter